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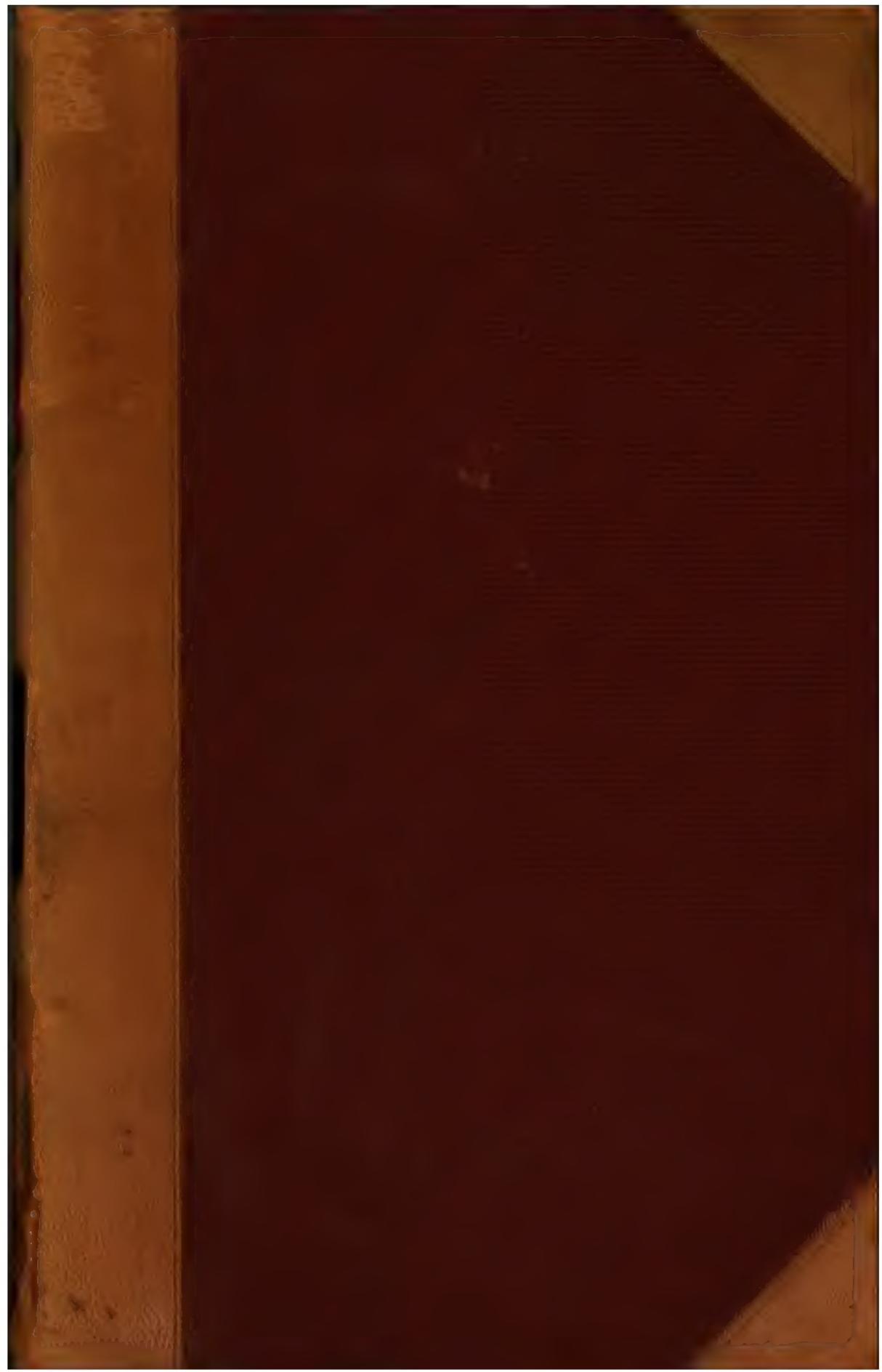
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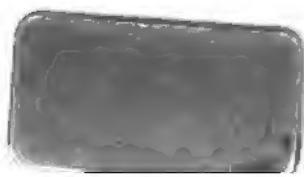
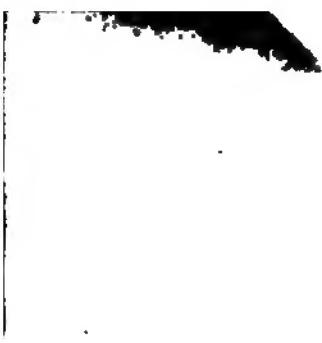
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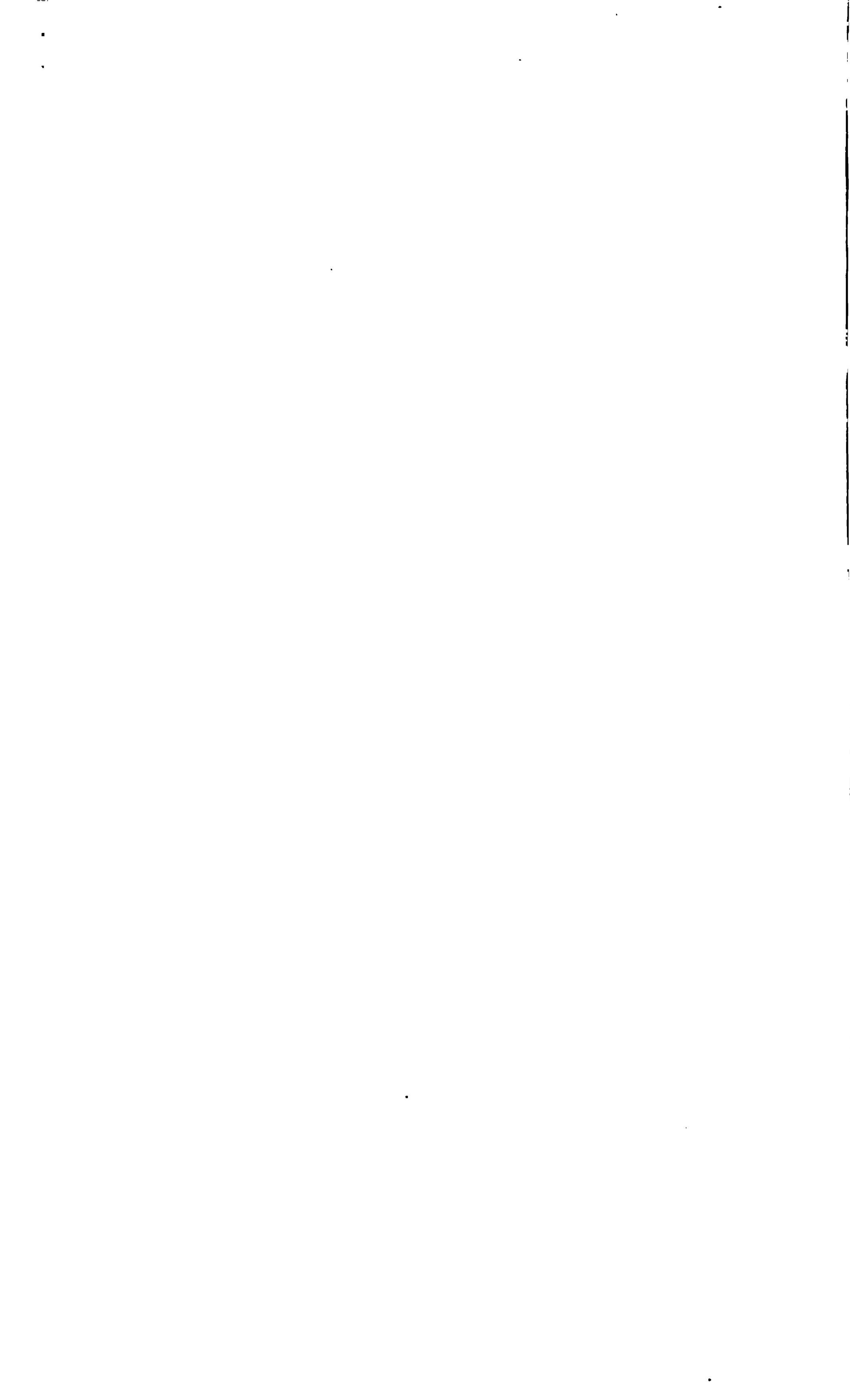
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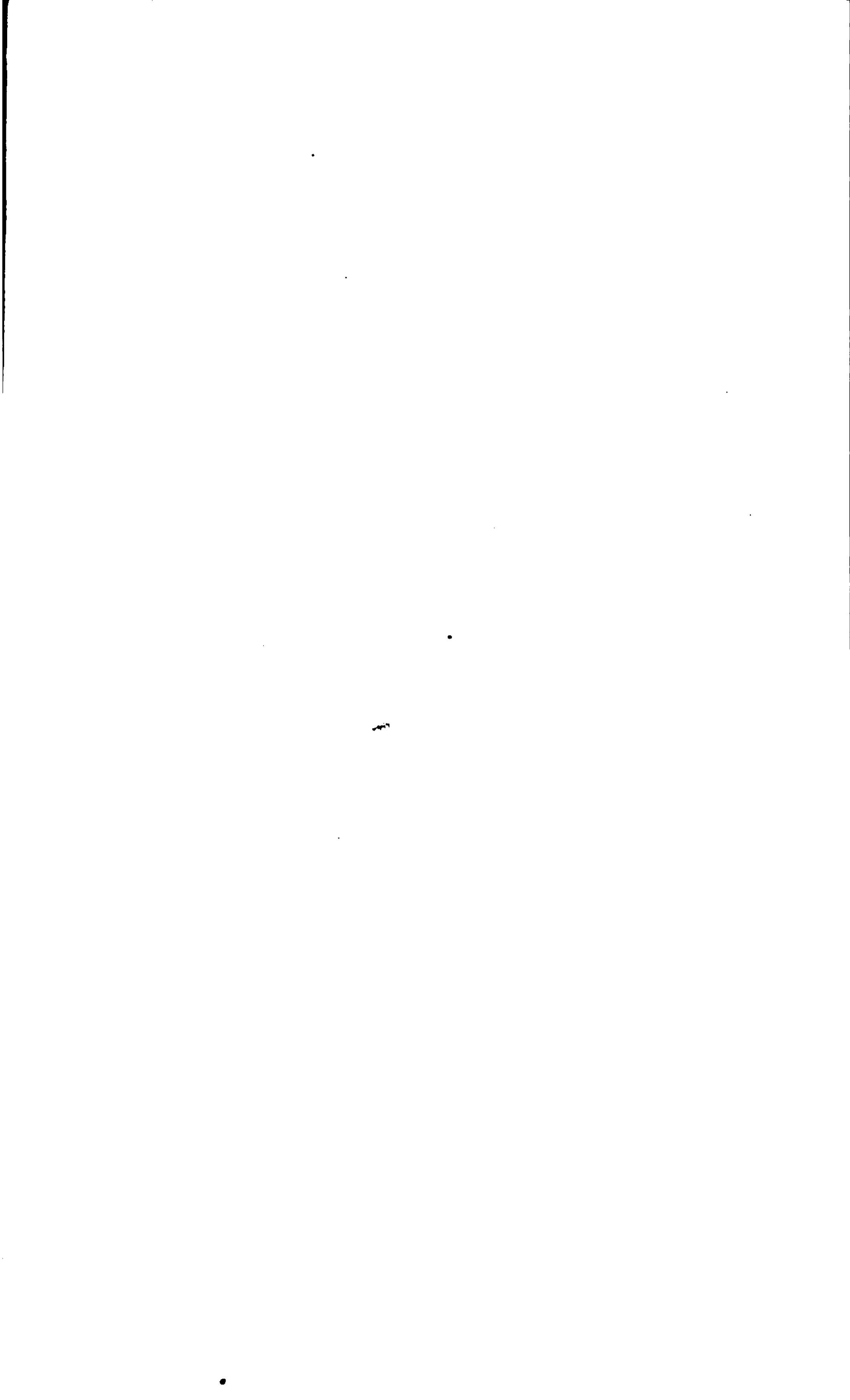
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THE  
**LEGAL OBSERVER,**  
OR  
**JOURNAL OF JURISPRUDENCE.**

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PUBLISHED WEEKLY.

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NOVEMBER, 1839, TO APRIL, 1840,  
INCLUSIVE.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

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# The Legal Observer.

SATURDAY, NOVEMBER 2, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## CHANCERY REFORM.

### No. I.

#### THE SIX CLERKS' OFFICE.

We do not know that we can commence the labours of a new legal session with a subject more generally interesting, both to the public and profession, than that of Chancery Reform. The coming year must be a memorable one in its history. The government is pledged to bring their scheme forward—the opposition to cease to be an opposition on this question. All parties in the state demand that justice shall be done to the suitor in equity. One great grievance, perhaps the greatest—the arrear of causes waiting for a hearing—we have repeatedly laid before our readers. We need not re-open this wound in the present number. A little further on will be found the actual list of causes; which amount to no less a number than 765, and 109 abated or standing over. These open their “dumb mouths” sufficiently on the present occasion. We turn rather to some other sources of delay and expense, which do not lie so immediately on the surface, but which much impede the progress of a cause both before and after hearing. We shall bring before our readers, in turn, the various offices connected with the Court of Chancery; and we shall commence with

#### THE SIX CLERKS' OFFICE.

It is not a little singular, amidst so many changes in the Courts both of Law and Equity, that the Six Clerks' Office should remain on its ancient footing, with the exception only of the reduction of the num-

ber of Six Clerks.\* The same fees are still paid, to an enormous amount, for office copies; and the old practice preserved of conducting the proceedings through the agency of clerks in Court; thus giving the suitor two persons to pay instead of one. Anciently the proceedings in all the Common Law Courts were carried on in much the same manner as they now are in Chancery, by a limited number of clerks in court, or side clerks; and the attorneys (the proper agents of the parties) could only act by means of these clerks. In the King's Bench and Common Pleas these “middle men” were long ago got rid of; and the attorneys “at large,” as they were called, were enabled to transact the business of their clients without this incumbrance. On the Common Law side of the Court of Exchequer the old system continued (as it still does in Equity) till the year 1830, when it was abolished by the Administra-

\* The Chancery Commissioners, by no means impatient or sweeping law reformers, admit the uselessness of the Six Clerks. “We cannot think there is sufficient occasion for six persons in this office, or that the suitors derive adequate benefit from the fees paid therein. But we are of opinion, that these officers may, under new regulations, be employed most usefully for the public in the discharge of the duty in taxing costs, from which it is, upon many accounts, desirable to relieve the Masters.” Report of Chancery Commissioners (1826), p. 33. By the Chancery Regulation Act, 3 & 4 W. 4, c. 94, s. 28, the number is reduced to *two*, but no additional duty is given them. We say with Regan, in this instance, “What needs one?” As to empowering them to tax costs, we admit that the present mode of taxation is highly unsatisfactory, but we shall venture to propose our remedy for this in our next article on this subject.

B

tion of Justice Act, 1 W. 4, c. 70, and every attorney is now allowed to practise in his own name. The advantage of the alteration has been manifested by the vast increase of the business of that Court, which was formerly despatched in an hour's sitting, and now exceeds that of the Common Pleas.

It is, then, surely worthy of inquiry why the suitors of the Court of Chancery should still be "incumbered with the help" of clerks in Court, whose fees for office copies and nominal attendances form a very large part of the costs of a suit, and not unfrequently operate as a denial of justice, by swelling the expenses to an amount which cannot be borne where the property is of moderate extent.

There can be no good reason why a suit in Chancery should not be carried on in the same way as an action at law. After a subpoena has been issued compelling the defendant's appearance, why should not the plaintiff be at liberty to prepare his bill and deliver a copy to the opposite solicitor, as a declaration is delivered at Common Law? and why should not the defendant deliver his plea or demurrer in the same manner? An answer must of course be *filed* for safe custody, but a copy might be delivered to the solicitor, and thus both time and expense be saved. The subsequent proceedings might be conducted in a similar manner.

It was formerly supposed that the Clerks in Court were peculiarly valuable officers, from their knowledge of the practice of the Court, which was not clearly or fully stated in the books. It was said that the solicitors were not well acquainted with its details, and as they could always obtain ready information from such oracles as the late Mr. Shaddick, Mr. Jackson, and others, they troubled themselves little about it. However that might be in former times, the extensive alterations effected by the Chancery Regulation Act, 3 & 4 W. 4, c. 94, and by the various New Orders of Court, have destroyed that traditional knowledge of practice which was previously to be sought in the Six Clerk's Office, and the solicitors may now read the orders, and the books of practice founded on them, for themselves, and readily learn the details of practice. The coming generation of solicitors especially, are compelled by the examination to make themselves in some degree acquainted with their practical duties in Courts of Equity. The time therefore, we think, is approaching, when

the fashion of assimilating the mode of procedure in our various tribunals will be extended to the Court of Chancery. The recent consolidation of the officers of the three Common Law Courts under Mr. Serjeant Goulburn's Act, 1 Vict. c. 30, is an instance of the change to which we refer, and we would gladly see it extended to the Courts of Chancery, by the entire abolition of this office.

## THE PROPERTY LAWYER.

### LEASE TO AN ALIEN ARTIFICE.

LORD COKE says "if an alien take a lease for years, of lands, meadows, &c., upon office found, the king shall have it. But of a house for habitation he may take a lease for years, as incident to commerce, for without habitation he cannot merchandize or trade," Co. Litt. 2, b. Mr. Hargrave adds to this, "but 32 H. 8, c. 16, s. 13, makes void all leases of houses or shops to an alien being an *artificer* or *handicraftsman*. This law, however contrary it may seem to good policy and the spirit of commerce, still remains unrepealed, but in favour of aliens it has been construed very strictly." n. (7.) Blackstone, however, considers this statute repealed. In his second volume he lays it down without any qualification, that an alien "can hold nothing *except* a lease for years of a house for convenience of merchandize in case he be an alien friend," p. 293; and in vol. 1, he says, "aliens also may trade as freely as other people, only they are subject to certain higher duties at the Custom House [now entirely done away with by 24 Geo. 3, sess. 2, c. 16,] and there are also some obsolete statutes of Hen. 8, prohibiting alien artificers to work for themselves in the kingdom, but it is generally held that they were virtually repealed by statute 5 Eliz. c. 7," p. 372. On this Mr. Stewart says, "but there does not seem any other authority for this but Blackstone's, 1 Woodes. Lec. 273, n. 1." Rights of Persons, p. 396. In a very recent case, the stat. of 32 Hen. 8, has been treated by the Court of King's Bench as in force. An alien artificer took possession of a dwelling house, under an agreement in writing, which provided for the granting of a future lease, and it was held that this being illegal under 32 Hen. 8, c. 16, the lessor might enter at any time and eject the tenant, although the instrument did not amount to a lease. Lord Denman, C. J., said, "It appears to me

very questionable whether this instrument amounts to a lease, and whether the landlord had expressed any determination of the tenancy at will, so as to authorize him to enter. But it is averred in the plea that the plaintiff took and continued in possession of the dwelling house on the faith and terms of the agreement, with the view and intention to carry it into effect. Now, as the agreement was unlawful, the possession under it was also unlawful, and therefore the defendant was justified in making the entry in the manner pointed out in the plea." *Lapierre v. M'c Intosh*, 1 Per. & Davidson, 629. In the argument it was not contended that this statute was repealed. The passages in Coke and Blackstone must now, therefore, be read with the qualification imposed by the stat. of 32 Hen. 8. As to what an alien may take, see further, 18 L. O. 387.

## PRACTICAL POINTS OF GENERAL INTEREST.

### ILLEGAL WAGER.

A GAMING contract should not be encouraged if it has a dangerous tendency. Thus a wager between voters at an election as to the result of the poll, is illegal. *Allen v. Hearne*, 1 T. R. 56. So is a wager that one of the parties would not marry within a specified number of years. *Hartley v. Rice*, 10 East. 22; also, a wager on the duration of the life of Napoleon Buonaparte. *Gilbert v. Sykes*, 16 East. 150; or on the sex of the Chevalier D'Eon, *Da Costa v. Jones*, Cowper, 722. See other cases collected as to what wagers are legal or illegal, 14 L. O. 53; and 13 L. O. 51. The last case on this point, is that of *Evans v. Jones*, 5 Mee. & Wels. 77, in which it was held that a wager as to the conviction or acquittal of a prisoner on trial on a criminal charge is illegal, as being against public policy. In the argument, it was attempted to class wagers into two classes; wagers, which a Judge may refuse to try, as in *Thorton v. Thackeray*; 2 Y. & J. 156; and wagers which are held illegal as being against public policy, but the first class of cases is exploded, per Lord Abinger, C. B.; and Parke, B., said "The Judge is bound to try them at some time, though he may postpone them until after cases of more importance have been tried." It is to be observed that in *Jones v. Randall*, Cowp. 17, a wager upon the event of a suit at law has been held to be legal.

## MICHAELMAS TERM EXAMINATION.

We are informed that the following is the state of the List of Candidates for the approaching Examination:—

By the printed list of notices of admission, it appears that the number intending to apply is ... 166  
But of these many have been already examined and obtained certificates of approval, viz. .... 20

146

Among these there are also a few who, though they have given notice of admission, have omitted to give notice of examination, namely ..... 5

141

To which number is to be added those who have given examination but not admission notices ... 7

148

Making the total number to be examined ..... 148  
A considerable per centage is, however, to be deducted for illness, accidents, and other causes of absence; but even if 120 or 130 should attend, we think our readers will agree with us that they will be amply sufficient to make up for those who died since last Term, or have made their fortunes, or retired for other good causes and considerations.

Though we do not hear that the Questions will be more difficult than usual, we think it may be anticipated that either now or at no distant time the Examiners will expect the Answers to be more complete than in the early progress of the plan was expected. We recommend, therefore, the Candidates to do their best, and not attempt to distinguish themselves by a hasty consideration of the Questions for an hour or two only.

On this subject, we trust we do not go out of our way in noticing the Third Edition of the Articled Clerk's Manual, just published; in the advertisement to which it is stated that "this edition contains the whole of the Questions put at the Examinations, from their commencement in 1836, to Trinity Term last. We need hardly point out to the Student the advantage of familiarising himself with all these Questions, some of which must occur at every subsequent examination."

**NOTICES OF NEW BOOKS.**

*The Hand-Book, being a Guide to the Chancery Judges' Opinions of the Peculiarities and Faults of the various Decisions and Reports in Chancery, Bankruptcy, and Parliament, both English and Irish, with Subjects and Index.* By George Farren, jun., Esq., Chancery Barrister of Lincoln's Inn, Author of "A Key to the Statutes;" "A Statute made easy;" "Guide to the Statutes at Large." London: Richards & Co., 1839.

THIS is a book of great labour and utility. "It often happens (says Mr. Farren) in the rapidity of argument in Court, or in the hurry of business, that cases are cited and carry the judgment, of which cases it cannot be supposed that the opposing Counsel or the Judge is at the moment aware how far they have been overruled or shaken; and this little Treatise is intended as a Hand-Book, which being in the Advocate's bag, or at hand, enables him at once, when a case is cited, (by reference merely to the name, as in a pocket dictionary) to see how he is to deal with such cases when shot off against him: so also at consultation; so also in more deliberate business at chambers."

We think Mr. Farren has carried his design into effect in a concise and very convenient method. He has arranged his materials in three columns. The 1st contains the subject-matter of the case reported, as "Partition;" "Waste;" the 2d column states the name of the objectionable case with the usual reference to the reporter; and the 3d, gives the name and reference to the case and reporter, and the precise page where the judicial objection is expressed.

We have had frequent occasion to notice the delay in publishing the Law Reports, the great length to which the details of facts and documents unnecessarily extend, and the evil of having various contemporaneous reports. Mr. Farren has shewn that in addition to these grievances, there is yet another: namely, the "Errors of Reporters." In almost every page of his Work, he notices several errors in the recent as well as the early Reports. We must not enter upon a statement of these "uncertainties of the law;" but Mr. Farren's industry tends to prove the importance of a measure, which we recommended for consolidating or digesting the *Lex non scripta*, so far at least as would have the effect of relieving the practitioner from consulting various conflicting authorities, and reducing

his amount of labor to some reasonable bounds. We are not in favour of the hopeless attempt at forming a Code of our Common Law, but we think something useful may be done in throwing aside a large mass of reported cases which are of doubtful authority, and thus narrowing the field of legal research.

**PRACTICE UNDER THE IMPRISONMENT FOR DEBT ACT.**

Sir,

A difference of opinion existing as to the practice where a defendant is arrested by the Judge's order under the Imprisonment for Debt Act, will you have the kindness to find room in your Journal for the following, when perhaps one of your correspondents will take the trouble of giving his view of the matter.

In the first place, one side of the question urged, that in the event of a defendant being arrested, the declaration must be worded in the old form, (i. e.) "who has been arrested, &c.," and argued in defence of their position, that in the event of the defendant absconding, it is necessary in order to enable the plaintiff to proceed against the bail, that it should appear on the record, that it is a bailable action, as the Court in any proceeding against them will only look at the record.

In answer to that, it is submitted that there is now no such thing as a bailable action: that the writ of *capias* cannot be considered a primary writ (inasmuch as it cannot be issued in the first instance) but only in the light of an interlocutory proceeding, and that when the purpose for which it issued is answered, it falls to the ground. 2dly, That as the record must in all cases agree with the declaration, and as the writ of *capias* may be issued in any stage of the proceeding before final judgment (see 5th section of the act), supposing the writ to be issued after declaration, and the action be defended, it must either appear on the record that the defendant "was summoned by virtue of a writ issued, &c." referring to the writ of summons; or the declaration must be amended, which would be making the writ of *capias* appear the commencement of the action, which by the act it clearly never can be (see sect 2); and 3dly, that the Court will not confine themselves to the record, but that the bail-piece as filed is sufficient evidence of the defendant having been held to bail, and delivered to them as his bail.

It is also urged on one side, that immediately on special bail being put in and perfected, the plaintiff is at liberty to deliver declaration, &c.; but on the other it is submitted, that as by the 2d section of the act all actions are directed to be commenced by writ of summons, the defendant must first be served with a copy of the writ of summons, or in the event of that being in a different county, that another must be issued and served, and an appearance entered for him (see stat.) or otherwise, before the plaintiff can declare.

N. S.

## CAUSE LISTS.

Michaelmas Term, 1839.

## Lord Chancellor.—Vice Chancellor.

## Judgments.

- Attorney Gen. v. Pearson, *appeal*  
 Walford v. Marchant, *ditto to be spoke to*  
 Chapman v. Severn, *appeal*  
 { Codrington v. Johnson, } *ditto*  
 { Johnson v. Codrington, } *ditto*  
 Attorney Gen. v. Wilson, *ditto*  
 Scarborough v. Borman, *ditto*  
 Tullett v. Armstrong, *ditto*  
 Hardham v. Ellames, *cause*  
 Noel v. Middleton, *exceptions*  
 Trash v. Wood, *cause*  
 { Nicholson v. Foster, } *ditto*  
 { Ditto v. Simpson, } *ditto*  
 Munch v. Cockerell, 2 *appeals*  
 Cherry v. Boulbee, *appeal*  
 Attwood v. Small, 2 *appeals*  
 Watson v. Hayes, *appeal*  
 Wordsworth v. Wood, *ditto*  
 Aldridge v. Forbes, *ditto*  
 Burn v. Carvalho, *ditto*  
 Rishton v. Cobb, *ditto*

## Pleads and Demurrers.

- S. O. Foley v. Hill, *plea*  
 Murray v. Harcourt, *plea*  
 Robertson v. Gt. Western Railway, *demurser*  
 Baker v. Strickland, *ditto*

## Re-hearings and Appeals.

- Abated { Sherwood v. Storer, *appeal*  
 { Tucker v. Stone, *ditto*  
 Blanchard v. Cawthorne, *ditto*  
 Ashton v. Milne, *ditto*  
 Gambia v. Gambier, *appeal*  
 S. O. Barratt v. Howard, *ditto*  
 S. O. Attorney Gen. v. Brentwood, *appeal*  
 S. O. Alderwick v. Holland, *ditto*  
 S. O. Dobson v. Lyall, *appeal to be spoke to*  
 S. O. Dixon v. Dixon, *appeal*  
 S. O. Case v. Drosier, *part heard appeal*  
 S. O. { Attorney Gen. v. Boston, *appeal*  
 { Ditto Ditto *ditto*  
 { Sainsbury v. Jones, } *ditto*  
 { Ditto v. Doggerell, } *ditto*  
 Ward v. Painter, *ditto*  
 Attorney Gen. v. Bovill, *ditto*  
 Dearman v. Wyche, *ditto*

Michaelmas Term, 1839.

Saturday, 2nd November,

## Motions.

Tuesday, 5th November,

## Causes, Further Directions and Exceptions.

- Abated { Newham v. Timbrell  
 { Villers v. Flint,  
 Pelham v. Towne,  
 Knott v. Chamberlain, } Abated in  
 Price v. Smith,  
 Scaife v. Scaife,  
 Orred v. Shuttleworth, } 1829  
 Leonard v. Chambers,  
 Garrett v. Cockerell  
 Dovehill v. Barnett,  
 Codrington v. Lyne,  
 Delfosse v. Butler,  
 Bailiff, &c. of East Retford  
 v. Cottam,  
 Penruddock v. Watts, } Abated  
 1831

- Morrison v. Roberts,  
 Dixon v. Robinson,  
 Brown v. Gaubert,  
 Stone v. Stewart,  
 Woodman v. Bostock,  
 Bolton v. Barnes,  
 Baring v. Theobald,  
 Kynaston v. Capper,  
 Edwards v. Rutherford,  
 Roberts v. Lee,  
 Pimer v. Mifflen,  
 Clarke v. Clarke,  
 Adams v. Brine,  
 Best v. Bayley,  
 Ponget v. Chambers,  
 Janaway v. Williams  
 Ballard v. Triggs  
 Morris v. Wilson, *fur. dirs. & costs*  
 Hamilton v. Williams  
 Yarnold v. Yarnold, *exs. f. dirs. & costs*  
 Smith v. Twinning  
 Underwood v. Cole  
 Bosanquet v. Burnand, *fur. dirs.*  
 Weeks v. Baron  
 Hancock v. Teague, *exceptions*  
 Nochells v. Lingham, *ditto*  
 Barratt v. Howard, *exceptions*  
 Lacon v. Waterton  
 Clobery v. Herring  
 Folland v. Lamotte  
 Ball v. Lawes  
 Harvey v. Leaf  
 Arnold v. Hardwicke  
 Hinckman v. Sadler  
 Griffith v. Richards  
 Reece v. Taylor, *exceptions 2 sets*  
 { Ryan v. Hill, } part heard  
 { Ryan v. Wood, }  
 Bryant v. Beale, 3 *causes*  
 Sharman v. Heath  
 Flight v. Lake, *exceptions*  
 { Wilson v. Beddard }  
 { Ditto v. William }  
 Cochrane v. Curlewis  
 Weatherall v. Brown, *fur. dirs. & costs*  
 Fermor v. Breeds  
 Stiff v. Simmonds  
 Trought v. Trought  
 Griffith v. Browne  
 Edwards v. Lloyd  
 Sewell v. Murray  
 Manistre v. Vines  
 Hussey v. Bickerton  
 Richards v. Commins  
 Heaton v. Blair, *exceptions*  
 Phillips v. Edwards  
 Williams v. Owen  
 Attorney Gen. v. Laslett  
 Powell v. Bettiss  
 Woodforde v. Woodforde, 2 *causes*  
 Kidd v. North  
 Morris v. Colclough, *exns. & fur. dirs.*  
 Woolwich Ferry Company v. Clarke,  
 further directions  
 Banks v. Le Despencer, *fur. dirs.*  
 Ditto v. Stapleton, by order  
 Odgers v. Teague, *exceptions*  
 Muggeridge v. Muggeridge, *f.ds. & cs.*  
 Bowers v. Sherman, *fur. dirs. & costs*  
 Bonfil v. Purchas, *fur. dirs. & costs*  
 Cooper v. Emery, *exceptions*  
 Felton v. Turner, *fur. dirs. and cause*  
 Rawlings v. Solomons  
 Hill v. Stephenson  
 Heap v. Haworth  
 Wise v. Howard Etecon

## Cause Lists.

Abated	Gordon v. Robley Snelling v. Humphreys, fur. dirs. and cause by order	Rolls v. Clarke Mills v. Baylis Hodges v. Curzon
Abated	Fox v. Beedham	{ Praed v. Richardson
Abated	Gooch v. Wilson	Ditto v. Jeningham
Abated	Barton v. Jayne, at deft.'s request	Burnett v. Booth
Abated	Shale v. Hodson	Willatts v. Marchant
S.O. L.C.	Poore v. Wolff	Pye v. Linwood
L. C.	Swaine v. Pratt, 4 causes, exceptions,	Vale v. Sherwood
Abated	Hurrell v. Tarn [& fur. dirs.]	Bishop v. Stowers
Abated	Haylar v. Field	Rodgers v. Brown
Abated	Barton v. Jayne	Stark v. Shepherd
S. O.	Sharwood v. Maine	Brent v. Brent
Abated	Jackson v. Pickering	Brown v. Bassett
S. O.	Neate v. Pink	Millor v. Vickery
S.O. L.C.	Davison v. Cutler, further directions	English v. Mann
Abated	Orton v. Richdale	Smith v. Baker
Abated	Griffiths v. Aldersey, fur. dirs. & costs	Thackkerry v. Bell
L. O.	{ Borrough v. Philcox, ditto	Kenrick v. Cooper
L. C.	Lacy v. Ditto, cause	Perrior v. Blandford
S.O. L.C.	Burgess v. Thompson	Moore v. Roe
Abated L.C.	El. of Falmouth v. Alderson	Fox v. Mechlin
L. C.	Temple v. Duke of Buckingham	Devereux v. Fanning, exceptions
L. C.	{ Attorney-Gen. v. El. of Stamford	Jones v. Roberts
L. C.	Ditto v. Egerton }	Langley v. Fisher
L. C.	Robins v. Cleaver	Yate v. Ricardo, pauper
L. C.	Chatfield v. Betts	Parker v. Yeadon, pauper
L. C.	Ashley v. Waugh	Vickery v. Gurney
L. C.	Grafton v. Froggatt	{ Sharman v. Heath
L. C.	Green v. Green	Howe v. Ditto
L. C.	Morgan v. Sivill	Perry v. Tanner
L. C.	Thomas v. Thomas	Ellis v. Attorney-Gen. fur. dirs. & co.
L. C.	Borwick v. Willatt	Vaughan v. Headfort
L. C.	Lyddon v. Woolcock	Watkins v. Brent, at deft's request
L. C.	{ Roberts v. Evans	Melville v. Preston Etecon
L. C.	Hughes v. Ditto, fur. directions }	Gumersall v. Anstead, fur. dirs. & co.
L. C.	Cresswell v. Balfour	Houghton v. Houghton
L. C.	Gould v. Uttermare	Hodgkinson v. Walley
L. C.	Wingate v. Cresswell	Thompson v. Maister, fur. dirs. & costs
L. C.	Winter v. Boys	Logan v. Smith
L. C.	Perry v. Jenkins	Sidney v. Ranger, exceptions
L. C.	Lewes v. Tipton	Donovan v. Donovan, exns. & fur. dirs.
Abated	Breeze v. Hawker	Harcourt v. Northwood
Abated	Long v. Thomson	Maurice v. Wilson
	Hunter v. Pugh	Stabb v. Weakley
	{ Purton v. Britnell	Winder v. Kershawne
	Purton v. Branscomb }	Dixon v. Langhorn
	Forsyth v. Chard	Turner v. Trelawney
	Martin v. Pellett	Bennett v. Kitchen
	Slater v. Lumsey	Hanmer v. Hamlet
	Festing v. Allen, fur. dirs. and costs	Taylor v. Matthews
	Wagstaffe v. Burnham, exons. & petn.	Waters v. Waters
	Bristow v. Wood fur. dirs. & costs	Toner v. Thompson
	Maund v. Allies	Howes v. Hedge
	Liddell v. Taylor, fur. dirs. and costs	Merceron v. Bragg
Abated	Robson v. Noel	Campbell v. Fleming
	Bolton v. Malkin	Jones v. Jones
	Woodroff v. Titterton, exceptions	Williams v. Williams
	Dillon v. Coppin	Kaye v. Watson
	Mersey v. Mersey, fur. dirs. and costs	{ Smith v. Roberts
	Brown v. Williamson	Lloyd v. Hebeter }
	Pemberton v. Stubbs, exceptions	Moon v. Brown
	Goldie v. Thompson, fur. dirs. & costs	Crawford v. Wyke
S. O.	Loftus v. Thomas, exceptions	{ Davies v. Cooper
	Sparks v. Sparks, fur. dirs. and costs	Cooper v. Jackson }
	Slater v. Hartley	Fairbrother v. Mason
	Rudd v. Sewell	Copley v. Creyke
	Hedgely v. Dines	Barwell v. Briggs
	De Clifford v. Marquis of Tavistock	Wildes v. Davies
	Green v. Mitton	Toner v. Evison
	Musgrave v. Newton	Lee v. Shaw
	Hilchon v. Turner	Swan v. Bowden
	Mills v. Hudson, at request of deft.	Porter v. Toft (pauper)
	Chambers v. Green	Strother v. Dalton
Abated	Wegg v. Ld. Petre, at request of deft.	Grover v. Holroyd
	Wartnaby v. Shuttleworth	St. John v. Champness, exns.

Thomas v. Swanwick, *fur. dirs. & costs*  
 Barnwell (*pauper*) v. Cooke, *defendant's request*  
 Brown v. Davenport, *causes. fur. dirs. & costs*  
 Hunter v. Judd, *fur. dirs. and petn.*  
 Ditto v. Ditto, *cause*  
 Pitman v. Lockyer  
 Taylor v. Fisher  
 Graves v. Burgess, *at deft's request*  
 Lee v. Lee, *at deft's request*  
 Milner v. Singleton  
 Crowfoot v. Mander  
 Holroyd v. Jackson  
 Attorney-General v. Stone  
 { Pearse v. Brooke }  
 { Ditto v. Bryan }  
 Williams v. Vanhouse  
 Gordon v. Peirson  
 Lozon v. Pryse  
 Bennett v. Nesbitt  
 Ashbee v. Ashbee, *fur. dirs. & costs*  
 Williams v. Corbett, *exceptions 3 sets*  
 Walton v. Morritt  
 Hobby v. Collins  
 Pritchard v. Pritchard  
 Miller v. Little, *exceptions*  
 Bryan v. Twigg, *exceptions*  
 Bazalgette v. Kirlew  
 West v. Funge  
 Emmott v. Hallatt  
 Hull v. Radcliffe  
 Emmott v. Brownjohn  
 Salter v. Partridge  
 Ackers v. Shakspear  
 Sandys v. Long, *at request of deft.*  
 Bassett v. Waterfield  
 Tapscott v. Newcombe  
 Matthews v. Wyburn  
 Caldecott v. Caldecott  
 Westover v. Foster  
 Groom v. Chambers  
**Abated** Nail v. Punter  
 Webber v. Bolitho, *at request of deft.*  
 Wait v. Horton  
 Gorton v. Chambers  
 Marshall v. Marsh  
 Isaac v. Russell  
 Attorney-General v. Goldsmiths' Co., *at defendant's request*  
 Boys v. Trapp  
 Loveland v. Maxey  
 Tarbuck v. Martin  
**S. O.** Benson v. Elmbirst  
 Jervoise v. Winn, *exceptions 2 sets*  
 Ball v. Barber, *exceptions*  
**L. C.** Bullivant v. Taylor, *ditto*  
 Marshall v. Marsh  
 Brickwood v. Harvey  
 Wood v. Lambirth, *causes. & fur. dirs*  
 Grant v. Hutchinson  
 Hurle v. Sweet, *fur. dirs. & costs*  
 Peacock v. Stockford, *ditto*  
 Metcalfe v. Warrington, *fur. dirs. & co.*  
 Hulme v. Hulme, *ditto*  
 Holmes v. Upton  
 Field v. Churchill  
 Logan v. Baines  
 Crutchley v. Gardner  
 Rogers v. Frank  
 De Beauvoir v. Rhodes  
 Morrell v. Owen  
 Hickman v. Gibbons  
 Robinson v. Milnes  
 Harrison v. Borwell

Inge v. Inge  
 Coulton v. Middleton  
 Joyce v. John  
 Edmunds v. Nixon  
 Smith v. Poole  
 Parry v. Pugh  
 Perfect v. Reynolds  
 Herring v. Cloberry  
 Bailiffs' of Bridgnorth v. Collins  
 Pritt v. Clay  
 Williams v. Strelly  
 Child v. Knight  
 Curteis v. Kenrick, *fur. dirs. & costs*  
 Tatam v. Williams  
 Sutherland v. Abington  
 Baxter v. Atkinson  
 Brandon v. Budgen  
 Inge v. Inge  
 Buckeridge v. Glasse  
 Dandridge v. Besley  
 Robinson v. Myers  
 Allday v. Fletcher  
 Hazell v. Pettifer, *fur. dirs. and costs*  
 Jones v. Winwood, *ditto*  
 { Wastell v. Leslie }  
 { Ditto v. Carter }  
 Rabbets v. Reeves  
 Edes v. Edes, *2 causes*  
 Smith v. Smith  
 Boddington v. Woodley  
 Jackson v. Woolley, *fur. dirs. & costs*  
 Attor. Gen. v. Baines, *exs. 2 sets*  
 Ingle v. Neale, *fur. dirs. and costs*  
 Blathwayte v. Taylor  
 Goldie v. Thompson, *exceptions*  
 Johnson v. Child  
 Eyles v. Caulcutt  
 Hughes v. Cooks  
 Butcher v. Jackson  
 Crosse v. Bedingford  
 Fincham v. Coope  
 Attorney Gen. v. Glynn  
 Nicholson v. Horsey  
 Fullwood v. Dowding  
 Brown v. Waterfield  
 Flint v. Warren, *3 causes*  
 Pelham v. Turner, *at request defendant.*  
 Burdett v. Spencer  
 Robinson v. Williams  
 Runciman v. Stillwell  
 Bannatyne v. Leader  
 Mann v. Boys  
 Thompson v. Day  
 Long v. Bush  
 Capron v. Sansum  
 Pearse v. Matthews  
 Brandon v. Budgen  
 Littlehales v. Hollis  
 Lee v. Ibbotson  
 Sellers v. Threlfall  
 Brown v. Bassett  
 Rowlls v. Croft  
 Jones v. Jones  
 French v. French  
 Hall v. Cook  
 Attorney Gen. v. Nethercoat  
 Brown v. Brown, *fur. dirs. and costs*  
 Moore v. Moore, *exceptions and ditto*  
 Freeman v. Moreley, *fur. dirs. & costs*  
 Attorney Gen. v. Mathie, *exs. & do.*  
 Jones v. Jones, *fur. dirs. and costs*  
 Waters v. Stephens, *ditto*  
 Bainbridge v. Blair, *ditto*  
 Burrows v. Venables, *ditto*  
 Tritchley v. Williamson, *ditto*

Freeman v. Biers, *fur. dirs. & costs*  
 Trelawney v. Roberts, *exceps. & ditto*  
 Tatlock v. Wellings, *fur. dirs. & costs*  
 Noel v. Hoare, *exceptions*  
 Sinkler v. Crotch, *ditto*  
 Fletcher v. Northcote, *exceptions*  
 Melland v. Gray, *ditto*  
 Luckes v. Frost, *fur. dirs. & costs*  
 Barnaby v. Filby  
 Runceman v. Stilwells, *f. d. & costs*  
 Bartrum v. Bartrum  
 Collett v. Collett  
 Smith v. Pugh  
 Gwynne v. Lloyd, *fur. dirs.*  
 Hughes v. Rogers, *fur. dirs. & costs*  
 { Ward v. Swift } *ditto*  
 { Ditto v. Lucas } *ditto*  
 Marshall v. Allinson, *ditto*  
 Brickwood v. Dyson  
 Mayor of Tenby v. Attorney Gen.  
 Jones v. Lowe, *fur. dirs.*  
 Cotman v. Orton  
 Bishop v. Bishop, *fur. dirs. and costs*  
 Thomas v. Jones  
 Barker v. Beeston  
 Brunt v. Swindell, *fur. dirs. and costs*  
 Johnson v. Reynolds  
 Blundell v. Gladstone  
 Attorney General v. Cradock  
 Williamson v. Blain  
 Buckle v. Harris  
 Jones v. Smith  
 Sellars v. Dallimore  
 Webb v. Whitehead  
 Towgood v. Andrews  
 Hodgson v. Middleton  
 Attorney General v. Corporation of Bridgewater  
 { Attorney-Gen. v. West }  
 { Ditto v. Palmer }  
 Moore v. Painter  
 Hill v. Smith  
 Jumpson v. Pitchers  
 Fry v. Fry  
 L. C. Gompetz v. Ansdel  
 Anderton v. Walker  
 Pulsford v. Becham  
 Taylor v. Earl of Harewood  
 Gibbs v. Gregory  
 Newman v. Howard  
 Coppen v. Gray  
 Jeve v. Maish  
 Payne v. Bristol and Exeter Railway  
 Malpas v. Cawley  
 Beaman v. Hewson  
 Newell v. Hickinbotham  
 Gray v. Mumbray  
 Hayward v. Goodchild  
 Moody v. Hebbard, *pauper*  
 Barrow v. Duke of Norfolk, *at defts. request.*  
 Maitland v. Bateman  
 Bucknall v. Willment, *fur. dirs. & co.*  
 Boulton v. Boulton, *ditto*  
 Utterton v. Robins, *exceptions*  
 Terrell v. Matthews, *excons. & further directions*  
 Telford v. Kymer  
 Webb v. Grace, *fur. dirs. & costs*  
 Jones v. Chambers, *ditto*  
 Coape v. Forbes  
 Sillick v. Booth, *fur. dirs. & costs.*  
 Chafey v. Serjeant  
 Edwards v. Williams  
 Drever v. Dorien

Guy v. Sharp  
 Brundrett v. Jones  
 Gibson v. Bent, *excons. and fur. dirs.*  
 Sherwood v. Walker  
 Newman v. Williams, *fur. dirs. & co.*  
 Joy v. Birch  
 Hitchcock v. Clendinen  
 Lane v. Durant  
 Partington v. Halstead  
 Collingridge v. Cook  
 Hastings v. Gage  
 Morris v. Smith  
 Preedy v. Baker  
 Bamford v. Kershaw  
 Ord v. Lyon  
 Hodges v. Romilly  
 Marke v. Locke  
 Hawley v. Edwards  
 Attorney Gen. v. Blake  
 Attorney Gen. v. Wilson  
 Ashbrooke v. Brainbridge  
 Jenkins v. Cross  
 Price v. Blackmore  
 Jennens v. Jeanens *exceptions*  
 Foley v. Hill, *exceptions*  
 Earl of Falmouth v. Turner  
 Bealy v. Curling  
 Bushnell v. Bushnell  
 Cooper v. Denison  
 Collins v. Presdee  
 Gruggen v. Parke  
 Hawksworth v. Brammall  
 Beaumont v. Binns  
 Mighell v. Lashmar  
 Browne v. Lockhart  
 Hodgetts v. Lord  
 Sowter v. Bowden  
 Yemms v. Williams  
 Hobson v. Page  
 Dutton v. Haslam  
 Owen v. Dickenson  
 Lowe v. Pennington  
 Costa v. Albertazzi  
 Palmer v. Thatcher }  
 Hounsfeld v. Pitman  
 Smith v. Dannah  
 Evans v. Jones  
 Attor. Gen. v. Mathie, *at request deft.*  
 Vist. Ashbrooke v. Brainbridge  
 London and Birmingham Railway Company v. Winter  
 Benson v. Elmhurst  
 Corsbie v. Free  
 Budd v. Grundy  
 Prince v. Bird  
 Heale v. Heale, *3 causes*  
 Beresford v. Bp. of Armagh, *excons.*  
 Livesey v. Livesey, *excons 2 sets*  
 Jennens v. Jennens, *exceptions*  
 Creswick v. Antrobus, *fur. dirs. & costs*  
 Parker v. Vernour  
 Furze v. Sharwood  
 Mills v. Hudson, *at deft's request*  
 Halliday v. Best, *fur. dir.*  
 Kirkwall v. Fligh  
 Turnor v. Turnor  
 Richards v. El. Macclesfield, *excons.*  
 Gregory v. Cresswell  
 Countess Bridgewater v. Yardley  
 Cobbe v. Lowe  
 Allen v. Rogers  
 Keymer v. Pering  
 Loader v. Lawrence  
 Mqs. Bute v. Thompson  
 Young v. Young

Jefferys v. Jefferys  
 Dangerfield v. Evans  
 Brown v. Thorpe  
 Cole v. Davey  
 Att.-Gen. v. Bosanquet  
 Heurteloup v. Biggs  
 Waters v. Waters  
 Elliott v. Reynolds  
 Coster v. Ward  
 Cogger v. Byers  
 Horsehill v. Taylor  
 Goldsmid v. Drewe  
 Duncan v. Chamberlain  
 Wilkinson v. Harwood  
 Knowlys v. Madocks  
 Hartley v. Reynolds  
 Mackereth v. Dunn  
 Prentice v. Phillips  
 Protheroe v. Protheroe  
 James v. Dangerfield  
 Holland v. Gwynne  
 Vickers v. Hardwick  
 Ward v. Alsager  
 Ward v. Ward  
 Raxworthy v. Raxworthy  
 Martin v. Whichelo  
 Evans v. Adams  
 Evans v. James  
 Morse v. Tucker  
 Northwood v. Harcourt  
 Sandys v. Long, *at deft's. request*  
 Attorney Gen. v. Salters' Co.  
 Cropper v. Crosby  
 Hawley v. Powell  
 Inglis v. Forbes  
 Swain v. Pratt  
 Dorrien v. Driver, *excons. & fur. dirs.*  
 Browne v. Browne, *fur. dirs. & petn.*  
 Thompson v. Blades  
 Crighton v. Blink  
 Evans v. Williams, *fur. dirs. & costs*  
 Arkill v. Fletcher  
 Alexander v. Foster, *exceptions*  
 Hogg v. Barrett, *fur. dirs. and costs*  
 De la Hooke v. Hill  
 Jenkins v. Jenkins  
 Baldwin v. Rogers, *fur. dirs. and costs*  
 Comber v. Sowton, *exceptions*  
 Danks v. Danks, *ditto*  
 Aylett v. Hedingham  
 Studdy v. Farwell, *fur. dirs. & costs*  
 Weston v. Peache  
 Phelps v. Lawrie  
 Webster v. Jenner  
 Attorney-Gen. v. Irby, *fur. dirs. & costs*  
 Meigh v. Baker, *exceptions*  
 Eckley v. Pheysey  
 Soares v. Gower  
 Brocklebank v. Pallister  
 Wilkins v. Stevens, *7 causes for dirs.*  
 Nash v. Elsley  
 Duke of Sussex v. Moore, *fur. dirs. and costs*

*New Causes.*

Adams v. Traherne  
 Harrison v. Cumming  
 Cragg v. Gordon  
 Evans v. Parry  
 Moore v. Gould  
 Milroy v. Hodges  
 Terrington v. Pearson  
 Fellowes v. Paine  
 Drury v. Pitman

Elworthy v. Billing  
 Wakeman v. Trebeck  
 Cooper v. Durrant  
 Norcutt v. Dodd  
 Edgar v. Milburn  
 Corbett v. Basnett  
 Robinson v. Addison  
 Jones v. Curlewis  
 Stephen v. Lawry  
 Davis v. Grey  
 Parnell v. Hand  
 Lake v. Russell  
 Batt v. Anns  
 Taylor v. Thompson  
 Watson v. Labrey  
 Stephenson v. Bridger  
 Cockburn v. Sherman  
 Tulloch v. Hartley, *at deft's. request*  
 Benn v. Dixon  
 Stopford v. Lord Ganterbury  
 Merrikin v. Bland  
 Naylor v. Lackington  
 Attorney Gen. v. Habrdasheers' Co.  
 Short Frankling v. Drake  
 Short Bulter v. Lowe  
 Stammers v. Halliby  
 Miller v. Guardians of Easthampstead Union  
 Northwood v. Scrase, *fur. dirs. & cs.*  
 Leicester v. Leicester, *exceptions*  
 Peyton v. Hughes, *fur. dirs. and costs*  
 L. C. Everett v. Weaver, *excons & petitions*  
 Berkeley v. Swinburne, *fur. dirs. & cs.*  
 Smith v. Dawes, *ditto*  
 Scott v. Davis, *ditto*  
 Down v. Brayley, *exceptions*  
 London and Greenwich Railway Company v. Goodchild *excons.*  
 Montgomery v. Calland, *fur. dirs. & costs*

*Master of the Rolls.**Judgments.*

Attorney-Gen. v. Fishmonger's Co. Kneshworth's Charity Attorney-Gen. v. Fishmongers' Co. Preston's Charity Preston v. Meux Ditto v. Warburton Ditto v. Cracklin Ditto v. Cust	} Cause } Cause } Cause } Cause
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*Pleads and Demurrs.*

1st Cause-day Inglis v. Ld. Melbourne Demurrer  
Michaelmas Term, 1839.

Saturday 2d November—FIRST DAY OF TERM,

*Motions.*

Monday the 4th,

*Causes.*

1st Cause-day after Hil. T.—Partington v. Baillie  
 1st Cause-day—Attorney-Gen. v. South Sea Comp.  
 Come on with Suppl. Cause—Gibbs v. Bowes  
 1st Cause-day after Term—De Hourmelin v. Sheldon—Ditto v. Camus, *further directions & costs, 2 petitions and supplemental bill*  
 1st Cause-day—Cralan v. Oulton  
 Attorney-General v. Jones  
 Stand over till after further Report—Hargitt v. Bell—Ditto v. Ditto—Ditto v. Wilson, *further directions and costs, and petition*  
 Stand over—Earl of Mount Norris v. Phaire

Willats v. Busby—Willats v. Busby—8th Nov. 1837	Crockett v. Crockett
1st Cause-day after Term—Steer v. Wise	Pearce v. Verbeke—12th January, 1839
Day to be fixed by the Attorney-General.—Attorney-	Barnbridge v. Burton
Gen. v. Master of Dulwich College—20th April,	Price v. Berrington—14th January, 1839
1838	Hill v. Maurice
Baker v. Harwood	Liston v. Sargon—15th January, 1839
Stand over till Hilary Term next—Western v.	Sweeting v. Hellard
Williams, <i>further directions and costs</i>	Cooke v. Isaac
Lane v. Hardwicke—30th April, 1838	Dickenson v. Lord Holland
Stand over—Warsop v. Scrimshaw—31st May,	Aldworth v. Robinson—16th January, 1839
1838	Stevenson v. Smith
Attorney-General v. Brooke	Mellish v. Brooks—17th January, 1839
Hilary Term—Attorney General v. Whiteman	Ross v. Hafford
1st Cause-day aft. Term—Attorney-Gen v. Bayley	Pauper—Roberts v. Lloyd—21st January, 1839
Stand over till mentioned again—Codrington v.	Townsend v. Westacott
Johnstone—Johnstone v. Codrington, <i>exceptions</i>	Levy v. Pendergrass
<i>tions and further directions and costs</i>	Shilcock v. Gregg, <i>at defendant's request</i>
Hicks v. Keat—Ditto v. Groom—Stockham v.	Colebrooke v. Williamson
Keat, <i>exceptions</i>	Hughes v. Brigstocke—Lawrence v. Ditto, <i>at re-</i>
Hemming v. Pinkerton, <i>exons. fur. dirs. &amp; costs</i>	<i>quest of defendants</i>
Miller v. Little—Ditto v. Lawrence—Ditto v. Sid-	Gaunt v. Taylor, <i>further directions and costs</i>
engham, <i>further directions and costs</i>	Scott v. Cattley
Last day of Term—Knowles v. Mount—Ditto v.	Bennett v. Fowler, <i>further directions and costs</i>
Ayles—Ditto v. Parkerson—Ditto v. Ditto—	Walker v. Earl of Abingdon, <i>exceptions, 2 sets, fur.</i>
Ditto v. Ditto—Ditto v. Ditto, <i>further directions</i>	<i>directions and costs</i>
<i>and costs and petition</i>	Martin v. Drinkwater—Ditto v. Darien, <i>exceptions,</i>
Stephen v. Wrench, <i>exceptions</i>	<i>two sets, further directions and costs</i>
Cole v. Fitzgerald, <i>fur. dirs. &amp; costs &amp; petition</i>	Dickinson v. Player, <i>further directions and costs</i>
Eaton v. Smith—Ditto v. Ditto—Ditto v. Ditto,	Johnson v. Woods—Smith v. Johnson, <i>further</i>
<i>further directions and costs</i>	<i>directions and costs</i>
Randall v. Stanley, <i>further directions and costs</i>	Whitby v. Martin, <i>further directions and costs</i>
Carsham v. Newland—Falcon v. Ditto, <i>further</i>	Bevan v. Flight
<i>directions and costs</i>	Sidmouth v. Sidmouth—Ditto v. Lord Edon
Eyre v. Monkland—Ditto v. Everett—Ditto v. Gir-	Ankers v. Sandford
dlestone—Ditto v. Everett, <i>fur. dirs. &amp; costs</i>	Bolton v. Powell
Taylor v. Brown—3d November, 1838	Rhoades v. Cartwright
Hayes v. Haward	Sparke v. Mann, <i>exons. fur. dirs. &amp; costs</i>
Glew v. Adlard	Ring v. Hardwicke, <i>further directions and costs</i>
Nelson v. Bridges	Smith v. Birch—Ditto v. Ditto, <i>exceptions</i>
Cullingworth v. Loyd	Hoggard v. Clark, <i>further directions and costs</i>
Maw v. Hill	Filder v. Bellingham, <i>at defendant's request</i>
Stubbs v. Liston	Parlby v. Gilmore—Ditto v. Tyler
Farmer v. Dumelow—6th November, 1838	Seaber v. Harlock, <i>fur. dirs. costs &amp; petn.</i>
1st Cause-day of Term.—Ray v. Giles—Giles v.	Flashman v. Powell—Ditto v. Ditto—Bruen v.
Ray	<i>Ditto, further directions and costs</i>
Stand over—Stead v. Nelson	Heighington v. Grant—Ditto v. Heighington—
P. Palmer v. Lord Kensington—Ditto v. Walsh	<i>Ditto v. Grant, exceptions</i>
Wilson v. Mead—7th November, 1838	Smith v. Birch—Ditto v. Ditto, <i>fur. dirs. &amp; costs</i>
Drake v. Drake	Borrell v. Dann, <i>exceptions</i>
Farhall v. Farhall—10th November, 1838	Green v. Challenor, <i>further directions and costs</i>
Wormald v. Mackintosh—Ditto v. Ditto, <i>exons.</i>	Johnston v. Todd—Ditto v. Ditto—Ditto v. Ditto,
<i>and further directions and costs</i>	<i>exceptions, further directions and costs</i>
Curtis v. Holcombe, <i>exceptions</i>	Biease v. Burgh, <i>further directions and costs</i>
Baring v. Bordelins—12th November, 1838	Barlow v. Sewell—15th April, 1839
Passingham v. Sherborn	Martin v. Swannell, <i>further directions and costs</i>
Bebb v. Beckwith, <i>further directions and costs</i>	Cole v. Dawson—Ditto v. Ditto, <i>fur. dirs. &amp; costs</i>
Larkins v. Paxton, <i>further directions and costs</i>	Cockell v. Pugh, <i>further directions and costs</i>
Whitaker v. Ferrand	Moore v. Painter—16th April, 1839
Attorney-Gen. v. Johnson—Pride v. Fooks—Ditto	Tylee v. Stace
v. Knott—Ditto v. Fowler—Ditto v. Ditto—	Griffin v. Griffin
Ditto v. Ditto, <i>further directions and costs</i>	Attorney General v. Lister
Lewin v. Moline	Cantrell v. Sutton
Franks v. Price, <i>further directions and costs</i>	Gater v. Clive—Ditto v. Fenton—18th April, 1839
Evans v. Brown, <i>further directions and costs</i>	Smith v. Langford
Davies v. Hopkins, <i>further directions and costs</i>	Wainewright v. Hardisty
Hodgson v. Charlton, <i>further directions and costs</i>	Stocken v. Harbin
Pullan v. Manning, <i>further directions and costs</i>	Wade v. Cox—19th April, 1839
Hopkins v. Hopkins—Ratcliffe v. Ditto, <i>further</i>	Mills v. Hudson, <i>at deft.'s Chambers and Hick's req.</i>
<i>directions and costs</i>	Hoggart v. Cutts
Cooper v. Waldegrave, <i>exceptions and petitions</i>	Suckermore v. Dimes
Evans v. Thomas, <i>at request of defendants Timothy</i>	Attorney General v. Bosanquet—20th April, 1839
<i>and Wife</i>	Skipworth v. Skipworth
Peach v. Evans, <i>exceptions</i>	Howard v. Harrison, <i>at defendant's request</i>
Bates v. Bonner, <i>further directions and costs</i>	Tanner v. Dancey
Raikes v. Boulton, <i>further directions and costs</i>	Merridew v. Woodward—25th April, 1839

Maberop v. Doughney, further directions & costs  
 Attorney-Gen. v. Kerr—Ditto v. Wales—10th May, 1839  
 Palmer v. Wakefield, further directions and costs  
 Davies v. Davies—17th May, 1839  
 Bater v. Webber, further directions and costs  
 Gordon v. Hendrie, exceptions  
 Cotham v. West, exceptions  
 Williams v. Bown—23d May, 1839  
 Neale v. Samples, at request of defendant Hunt  
 Styles v. Styles  
 Boyle v. Irby  
 Jackson v. Ernst  
 Knight v. Frampton—Set down, May 24, 1839.  
 Short—Stand over to amend—Aldrick v. Cockburn  
 Artis v. Artis  
 Webb v. Stait—Set down, May 25, 1839  
 Bailey v. Earle  
 Attorney-General v. Sadlers' Company  
 Saunders v. Howell  
 Pyke v. Northwood  
 Maher v. Burn—Set down, May 27, 1839  
 Brooks v. Cooper  
 Attorney-General v. Stevens  
 Staile v. Palgrave  
 Brandon v. Woodthorpe—Subpoena notes returnable, May 28, 1839—Set down, May 28, 1839  
 Mayston v. Clark  
 Barton v. Chambers  
 Lewis v. Deere—Lewis v. Thomas—Subpoena notes returnable, May 29, 1839  
 Tyler v. Tyler  
 Ellis v. Griffiths—Ditto v. Carns  
 Rudall v. Barry—Subpoena notes returnable, June 7, 1839  
 Lord Suffield v. Reed—Subpoena notes returnable, June 7, 1839  
 Kellaway v. Johnson—Subpoena notes returnable, June 17, 1839  
 Sheppard v. Sheppard—Ditto v. Ditto—Ditto v. Ditto—Ditto v. Ditto, fur. dirs. & costs—Set down, May 28, 1839  
 Attorney-Gen. v. Brickdale, fur. dirs. & costs—Set down, May 29, 1839  
 Beasant v. Clare, exons.—Set down, May 30, 1839  
 Hamer v. Hickman—Ditto v. Richards—Subpoena notes returnable, June 15  
 Page v. Broom—Ditto v. Page—Ditto v. Hams—Ditto v. Edwards—Ditto v. Ganderton, exons—Set down, June 6, 1839  
 Buswell v. Underwood—Subpoena notes returnable, June 26, 1839  
 Wilkins v. Stevens—Ditto v. Ditto—Ditto v. Ditto—Ditto v. Ditto—Ditto v. Cornwell—Ditto v. Ditto—Ditto v. Hawkins, exons.—Set down, June 12, 1839  
 Wild v. Hardy—Sub. notes returnable, June 28, 1839  
 Carter v. Bentall—Ditto v. Mendham, further directions and costs—Set down, June 12, 1839  
 Whittle v. Heming—Subpoena notes returnable, June 29, 1839  
 King v. Hammatt—Subpoena notes returnable, July 10, 1839  
 1st day of Causes.—Jones v. Maurice—Davies v. Ditto—Subpoena notes returnable, July 6, 1839  
 Buckmaster v. Rothrey—Set down, June 18  
 Gilbertson v. Webster—Ditto v. Ditto, further directions and costs—Set down, June 20, 1839  
 Benbow v. Curling—Ditto v. Francis—Subpoena notes returnable, July 13, 1839  
 Attorney-Gen. v. Mayor of Leicester—Subpoena notes returnable, July 16, 1839  
 Attorney-Gen. v. Coopers' Company—Subpoena notes returnable, July 9, 1839  
 Attorney-Gen. v. Miller—Subpoena notes returnable, July 16, 1839

Robinson v. Addison—Ditto v. Robinson—Subpoena notes returnable, July 12, 1839  
 Lichfield v. Baker, fur. dirs. & costs—Set down June 26, 1839  
 Montgomery v. Calland—Ditto v. Patrick—Edwards v. Ditto, exons.—Set down, July 4, 1839  
 Bastard v. Baily—Subpoena notes returnable, July 22, 1839  
 Butler v. Bushnell—Ditto v. Ditto—Ditto v. Young—Bushnell v. Bushnell—Ditto v. Ditto—further directions and costs and supplemental bill—Set down, July 10, 1839  
 First Cause-day—Hall v. Lewis—Set down, July 12, 1839  
 Woodcock v. Renneck—Set down, July 13, 1839  
 First day of Causes—Davies v. Gatacre, and petition Set down July 18, 1839  
 Beasant v. Clare, exceptions and further directions and costs—Set down, July 19, 1839  
 Short—Collins v. Johnson—Ditto v. Ditto—Ditto v. Smith—Ditto v. Bennett, further directions and costs—Set down, August 3, 1839  
 Short—Stand over—Noble v. Noble, further directions and costs—Set down, August 5, 1839  
 Hardwicke v. Richardson—Ditto v. Ditto—Ditto v. Jones, further directions and costs—Set down, August 5, 1839  
 Salmon v. Jones—Ditto v. Salmon—further directions and costs—Set down, August 6, 1839  
 Montresor v. Montresor, further directions and costs Set down, August 7, 1839  
 Rycraft v. Christy, further directions and costs—Set down, August 8, 1839  
 Hotham v. Somerville—Ditto v. Ditto, further directions and costs—Set down, August 8, 1839  
 Robertson v. Crawford, exceptions and further directions and costs—Set down, August 8, 1839  
 Stevens v. Webb—Ditto v. Nash—Ditto v. Hards, fur. dirs. and costs—Set down, August 16, 1839  
 Serjeant v. Treves, further directions and costs—Set down, August 19, 1839  
 Davis v. Davies, further directions and costs—Set down, August 23, 1839  
 Goodenough v. Tremamondo, further directions and costs—Set down, August 24, 1839

## New Causes.

Young v. Powys  
 Morgan v. Morgan  
 James v. James

Tuesday the 5th November

Reeve v. Cann  
 Corbett v. Corbett  
 Sark v. Upton, at request of defendant Smith  
 Barnard v. Pomfret

Wednesday the 6th

Stephens v. Stephens  
 Cless v. Humphries  
 Prentice v. Fairbrass  
 Shepherd v. Morris  
 Dixon v. Marson

Thursday the 7th November

Cheveley v. Cheveley  
 Crosswell v. Lord Kensington

Tuesday the 12th

The Registrar's day.

Wednesday the 13th

The Master of the Rolls Day.

Attorney Gen. v. Towle

## Queen's Bench.

Michaelmas Term, 3d Victoria, 1839.

## NEW TRIALS

Remaining undetermined at the end of the Sittings after Trinity Term, 1839.

Michaelmas Term, 1837.

Cornwall . . Magor and others v. Chadwick and others—*Bompas, Serjt.**Hilary Term, 1838.*London . . Trueman and others v. Loder—*Sir F. Pollock*" Rawlins v. Desborongh—*Wilde, Serjt.*  
*Easter Term, 1838.*Middlesex . . Merry and another v. Chapman, Esq.—*Kelly*Lancaster . . Humble v. Mitchell, sen.—*Alexander M'Clure v. Fraser—Same*" Greenough v. Orrell & ors.—*Cresswell Broadbent v. Ledward—Wightman*" Straker v. Oram—*Same*Chester . . Meegh v. Clinton—*Kelly*  
Doe dem. of Cope and others v. Hill" Esq. and others—*J. Jervis*  
Silvester v. Walker—*Welsby*" Cooke v. Walker—*Welsby*Montgomery Pugh v. Griffith, Esq.—*J. Jervis*  
Evans & ors. v. Jones & an.—*Same*Sussex " Doe dem. Millward and another v. Wood—*Andrews, Serjt.*" Rawlinson v. Elliott—*Charnell*Surrey . . Mills v. Claridge, Kat. & ors.—*Platt*Bucks . . Hitchcock v. Chaplin—*Storks, Serjt.*Bedford . . Wright v. Waterfield—*Gunning*Monmouth James v. Phelps—*Talfoord, Serjt.*

" Latch v. Thomas Wedlake &amp; Lewis

Thomas—*Maule*Salop . . Frank v. Edwards—*Same*" Eaton and others v. Jervis—*Talfoord, Serjt.*Gloucester Cole v. Cresswell—*R. V. Richards*  
*Trinity Term, 1838.*Middlesex Willis v. Bennett—*Attorney General*" Rowe v. Brookes—*Platt*" Cadby v. Martinez—*R. V. Richards*" Woolf v. Beard—*Humfrey*London . . Brown and others v. Blakiston—*Attorney General*" Allen, a pauper, v. Flicker & anor.—*Heaton**Michaelmas Term, 1838.*Middlesex Symes v. Nipper—*Erle*" Rush v. Peacock—*Same*The Queen v. Thomas Deane and others (2 cases)—*Kelly & Crowder*London . . Rothschild v. Currie—*Sir F. Pollock*" Rouch, ass. &c. v. The Great Western Railway Company—*Sir W. W. Follett*Corke v. Walker—*Kelly*Palmer v. Hembury—*Same*White v. Teal—*Platt*Levy v. Nolekin—*Knowles*Bucks . . Allan v. Gomine & an.—*Storks, Serjt.*" Nicholls v. Baker—*Kelly*Bedford . . The Queen v. Inhabitants of Barton—*Same*Cirket v. Wing, clerk—*Andrews*Cambridge Chambers v. Porter—*Kelly*" Eaden v. Berry—*Same*Norfolk . . Evelyn, Bart. v. Glover, clk.—*Same*Gloucester Luxton, ass. &c. v. Guppy—*Lullow, Serjt.*" Charlton v. Alway—*Same*Gloucester . Baylis v. Lawrence—*W. Alexander*Stafford . Taylor v. Sheldon—*Kelly*Worcester . Doe dem. of Hartwright & others v. Fereday—*R. V. Richards*Lancaster . Connell, one of the Public Officers, &c. v. Sawyer & ors., sued with Price—*Sir W. W. Follett*" Connell, on behalf of the Northern & Central Bank of England, v. Price, sued with others—*Alexander*Reynolds, one of the Public Officers, &c. v. Robinson & another—*Sir W. W. Follett*" Hartley v. Wharton—*Alexander*Leadbitter v. Hart—*Cresswell*" Bamford v. Shuttleworth & ors.—*Same*Cumberland . The Queen v. Inhabitants of Maryport—*Same*

Northumberland :

Doe on the several dems. of Nicholson & ors. v. Welford—*Cresswell*Nottingham . Christie, assignee, &c. v. Unwin & another—*Goulburn, Serjt.*Warwick . . The Queen v. Geo. F. Muntze and others—*Wilde, Serjt.*Derby . . Doe on the dem. of Sanforth v. Belfield and another—*Balgay*Cornwall . . Carne & ors. v. Street—*Bompas, Serjt.*Somerset . . Fox, administrator, &c. v. Waters & anor. exors., &c.—*Crowder*" Skeate v. Beale—*Erle*Hants . . Podmore v. Lawrence, clerk—*Same*Devon . . F. Atkins v. Kilby & anor.—*Crowder*Carnarvon . . Doe dem. of Wynne, Esq., v. Parry clerk & ors.—*Attorney General*Carmarthen . Evans v. Rees, Esq.—*Chilton*

County of borough of Carmarthen :

Davies v. Stacey & anor.—*Evans**Hilary Term, 1839.*Middlesex . The Queen v. Sarah Virrier—*Stephen, Serjt.*" Sims, administratrix, &c. v. Thomas, Esq., M.P.—*Erle*" Ladd v. Thomas & anor.—*Platt*" Smyth v. Boards—*Theobald*London . . Poole v. Crowder & anor.—*Att. Gen.*" Geary v. Harvey, Esq., M.P.—*Same*The Birmingham, Bristol, & Thames Junction Railway Company v. Locke—*Sir W. W. Follett*" Hey v. Wyche—*Same*Lady Tufton & anor. v. Whitmore & anor.—*Same*London . . Baker v. Baker—*Kelly*" Sadler & ors. v. Whitmore & ors.—*Same*" Bracey v. Carter—*Kelly*Abrahams v. Skinner—*J. Jervis*" Hart v. Crowley—*Platt**Easter Term 1839.*Middlesex . Edan v. Dudfield—*Kelly*The Aylesbury Railway Company v. Thompson—*Same*Deliisser v. Towne—*Same*Lynch an infant v. Nurdin—*Same*Hawkins v. Paxton—*Erle*

Doe dem. of Ivey v. Scott &amp; an. J. Jervis

Milligan v. Wedge—*Humfrey*Bennett exors. v. Burton, clerk—*Hoggins*Boorman & ors. v. Brown—*Attorney General*

London . .	Thompson & ors. exors. &c. v. Usborne— <i>Same</i>	York . .	Bacon v. Smith & anr. assignees &c.— <i>Cresswell</i>
"	Same v. Same— <i>Kelly</i>		
"	Rogers v. Custance—Sir F. Pollock		
"	Emys v. Bennetts & others. <i>Bompas Serjeant</i>		
"	Bult & ors. Morrell & ors.— <i>J. Jervis</i>		
Lincoln . .	Doe. dem. Long & ors. Churchwardens &c. v. The Dean and Chapter of Peterborough— <i>Andrews Serjt.</i>		
Leicester . .	Knight v. Mc. Dowall & ors. ( <i>in replevin</i> )— <i>Hill</i>		
Northampton	Doe d. Norton & ors. v. Webster— <i>Waddington</i>		
Nottingham	Williams Wo. executrix, &c. v. Fosbrooke— <i>White</i>		
Sussex . .	Adnam v. Thompson— <i>Thesiger</i>		
"	Boyce v. Ogle— <i>Platt</i>		
Essex . .	Taylor v. Henniker Bart.— <i>Same</i>		
"	Same v. Same— <i>Same</i>		
"	White v. Cutts— <i>Same</i>		
Bertford . .	White v. Donald— <i>Thesiger</i>		
Gloucester	Doe d. Allen & anr. Allen & another— <i>Ludlow Serjt.</i>		
"	Doe. d. Shingleton & ors. v. Faulkner— <i>Talfoord Serjt.</i>		
"	Hoare v. Scott— <i>Godson</i>		
Salop . .	Smith v. Stanley— <i>Talfoord, Serjt.</i>		
"	Lead v. Summers— <i>R. V. Richards</i>		
Monmouth	Doe d. Thomas v. Beynon— <i>Carrierton</i>		
Chester . .	The Mayor Alderman and Burgesses of the City of Chester v. Peers— <i>J. Evans</i>		
Chester . .	Bunting v. Barlow— <i>J. Jervis</i>		
Radnor . .	Doe d. of Crowther v. Drew— <i>J. Evans</i>		
Carmarthen	Jones v. Downman— <i>Same</i>		
Cardigan . .	Jones v. Jones ( <i>in replevin</i> )— <i>Chilton</i>		
Flint . .	Adams v. Jones— <i>J. Jervis</i>		
Norfolk . .	King v. Burrell— <i>Attorney General</i>		
"	Rix v. Borton clk. & anr.— <i>Andrews</i>		
Cambridge . .	Mitchell v. Foster— <i>Attorney General</i>		
"	Doe several dems. of Thompson & ors. v. Amey— <i>Andrews</i>		
Bedford . .	Smith Wo. v. Smith— <i>Storks Serjt.</i>		
Suffolk . .	Doe d. Garrod v. Olley & anr.— <i>Kelly</i>		
Bucks . .	Doe d. Farmer the elder v. Howe— <i>Same</i>		
Lancaster . .	Haigh & anr. v. Brooks— <i>Cresswell</i>		
"	Bayley, Gent, one &c. v. Ashton— <i>Same</i>		
"	The Queen v. Sharp— <i>Alexander</i>		
Lancaster . .	Ridgway & ors. v. Ewbank & anr.— <i>W. H. Watson</i>		
York . .	Tomlin v. Bowskill— <i>Alexander</i>		
"	Lockwood clk. v. Wood— <i>Same</i>		
"	Same v. Lund— <i>Same</i>		
"	Culvertson v. Melton— <i>Cresswell</i>		
"	Bentham v. Martindale— <i>Same</i>		
"	The Queen v. Stamper & anr.— <i>Bliss</i>		
Northumberland :	Stephenson v. Stainthorpe— <i>Alexander</i>		
Town and County of Newcastle :	Gibson v. Kirk— <i>Mathews</i>		
Cumberland . .	Martindale v. Smith— <i>Dundas</i>		
Dorset . .	Yeatman clerk v. Dashwood, clk to trustees &c.— <i>Bompas Serjt.</i>		
Cornwall . .	Powning v. Leach & anr.— <i>Same</i>		
Somerset . .	The Queen v. Walter Irvine— <i>Erle</i>		
	Trinity Term, 1839.		
Middlesex . .	Dixon v. Thompson, sued &c.— <i>Erle</i>		
"	Banks v. Rough, sued &c.— <i>Kelly</i>		
"	Nathan v. Irvin— <i>Defendant in person</i>		
"	Charles v. Cadell— <i>Ball</i>		

COURT IN BANCO.  
PEREMPTORY RULES,

For Michaelmas Term, 1839.

FIRST DAY.

Wilton, Gent., one, &c. v. Chambers	
Utterton v. Castledine	
Surrey . . The Queen v. Steward of Manor of Richmond	
Carnarvon . The Queen v. Christopher Alderson and others	
Carmarthen The Queen v. The Mayor, &c. of Carmarthen	
Lancaster . The Queen v. Manchester and Leeds Railway Company.	
Bristol . The Queen v. W. L. T. Pyle Taunton	
Glamorgan . The Queen v. The Mayor, &c. of Swansea	
In the matter of Wm. Willis, Gent., one, &c. and William Allen	
Norfolk . . The Queen v. Sarah Gamble & anr. Bailey, Esq. v. Bond and others	
Derbyshire . The Queen v. The Churchwardens of Edlaston	
Totnes . . The Queen v. Wm. Price	
"	The Queen v. Wm. Hobbarton
"	The Queen v. Jaspar Parrott
England . . The Queen v. William Batchelor Brownlow and others	
Middlesex . The Queen v. Commercial Railway Company	
Bedfordshire The Queen v. The Trustees of the Luton Roads	
Essex . . The Queen v. The Guardians of Braintree Union	
Glamorgan . The Queen v. The Mayor, &c. of Swansea	

SECOND DAY.

Goddard v. Trevannion and another
Lancaster . . The Queen v. Woodburn Postlethwaite
Liverpool . . The Queen v. Thomas Harvey Pitt v. Goodinge, Gent., one, &c.
Dorset . . The Queen v. The Tithe Commissioners of England and Wales
Bedfordshire The Queen v. The Justices of Bedfordshire
Lancaster . . The Queen v. John Harrison
Leicestershire The Queen v. The Guardians of Barrington on Sea
Carmarthen. The Queen v. J. L. Brigstocke and others
Yorkshire . . The Queen v. The Trustees of the Doncaster and Selby Roads
Stafford . . The Queen v. The Poor Law Commissioners (Alstonfield Incorporation)
In the matter of Wm. Robert Dodson and others
Knight v. M'Dowall & ors., <i>in replevin</i> .
Same v. Same, <i>in replevin</i>
Scruton v. Taylor and another
Lancaster . . The Queen (on prosecution of Brooks and others) v. The Sheffield, Ashton-under-Lyne, and Manchester Railway Company
The Queen (on prosecution of the devisees under the will of G.

	Legh, Esq.) v. The Same Jones v. Thomas	Wood & E.—Bryant v. Sir James Arthur, <i>dem.</i> Abrahams—Benjamin v. Belcher, <i>dem.</i>
	THIRD DAY.	Smart & B.—Doe d. Riddell Wo. v. Gwinnell, <i>special case</i> Jeyes & S.—Hill v. Leach, <i>dem.</i>
	In the matter of Elizabeth Berney Gibbs v. Trevanion and another	Battye & Co.—Guardians of the Poor of the Banbury Union v. Robinson, <i>dem.</i>
	Same v. Same	Few & Co.—Lloyd v. Pierce and others ( <i>in replevin</i> ) <i>dem.</i>
Warwickshire	The Queen v. The Birmingham Canal Company	Vandercom & Co.—Drewe v. Lainson, Esq. and another, late Sheriff of Middlesex, <i>dem.</i>
Gloucester . . .	The Queen v. John Harris Trevanion and another v. Holloway	Gore—Tomson v. Lanyon, <i>dem.</i>
"	Same v. Same [in error]	Bignold—Doe D. Park and wife v. Kirby, <i>spec. case</i>
	Same v. Martins—in error	Dean—Walmsley and another v. Cooper, <i>dem.</i>
	Same v. Savage—in error	Williamson & H.—Tindall v. Hepton and wife, executrix, &c. <i>dem.</i>
Lancaster . . .	Same v. Gibbs—in error	Anderton & S.—Doe D. Blight v. Pett, <i>special case</i>
"	The Queen v. The Justices of Lancashire—(appointment of overseers of Great Bolton)	Battye & Co.—The Guardians of the Poor of the Banbury Union v. Robinson, <i>dem.</i>
	The Queen v. The Same — (ap- pointment of overseers of Charlton)	Same—Bruce and the Bath River Navigation Com- pany v. Willis and others, <i>special case</i>
	FOURTH DAY.	Oliverson & Co.—Mitchell v. Ede & ors. <i>special case</i>
	Ex parte Geo. Fleetwood, in the mat- ter of Edw. Littledale and another	Carrett—Lawrie v. Francis, <i>dem.</i>
Dorsetshire	The Queen v. The Trustees of Harn- ham Roads	Coode & B.—Robins and others v. May, <i>dem.</i>
Salop . . . .	The Queen v. The Priors Ditton In- closure Commissioners	Frankham & D.—Joyce v. Clarke & Goswick, <i>dem.</i>
	Ex parte Cairne and another, in the matter of Alfred Leigh and another	Monkhouse—Read v. F. Wront, sued with ano. <i>dem.</i>
York . . . .	The Queen v. The Mayor &c. of York	Jones—Guppy v. Luxton, assignee, <i>dem.</i>
Middlesex . .	The Queen v. The Commercial Rail- way Company	Milne & Co.—Haughton & ors. v. Fielden, <i>special case</i>
Derbyshire	The Queen v. The North Midland Railway Company	Tilsons & Co.—Mayor, &c. of London v. Woolvet, <i>dem.</i>
	Firth v. Harris	Webber—Holmes v. Clifton, Esq., <i>dem.</i>
Lancaster . .	The Queen v. The Justices of Lanca- shire, (appointment of Overseers of Manchester)	Harmer & S.—Curtis v. Hickes, <i>dem.</i>
	Evans v. Okell	Karslake & Co.—Holdsworth, Esq. v. the Mayor of Dartmouth, <i>special verdict</i>
Middlesex . .	The Queen v. The Justices of Mid- dlesex, (St. Pancras appeal)	Hodgson—Davis v. Holding, <i>dem.</i>
"	The Queen v. The Same, sitting at Hatton Garden Office	Swan & M.—Wise v. Hodsell, <i>dem.</i>
	Ord and another v. Barrow and ano.	Lanibert & B.—Hatch v. Trayes, <i>dem.</i>
	Hunter v. Hicks	Smith & S.—Whittaker v. Lloyd, <i>dem.</i>
	—	Bicknell & Co.—Doe dem. of Blewett, otherwise called &c. Phillips, <i>special case</i> .
	BAIL COURT.	Blower & V.—Greenslade and ors. v. Perry, <i>dem.</i>
	PEREMPTORY RULES,	Lever—Smales v. Tyerman, <i>dem.</i>
	For Michaelmas Term, 1839.	Adlington & Co.—Doe D. Batchellor v. Ramey, <i>dem.</i>
	FIRST DAY.	Pearson—Yeatman, clk. v. Dashwood, clk. <i>dem.</i>
	Archer v. Kearse	Gough—Bloor and anor. v. Cox and anor., <i>dem.</i>
	Floud the younger v. Carter	Edwards—Kirk v. Thompson, <i>dem.</i>
	Thackthwaite v. Sinclair	Baity—Beaumont v. Pope, <i>dem.</i>
	Doe several dems of Haworth and another v. Helme and another	Bignold & Co.—Bignold and others v. Parken and another, <i>dem.</i>
	Anthony Marmion v. Lady F. Parker	Lewis—Whyte, administrator, &c. in person v. Rose, <i>dem.</i>
One Rule	Coull v. Hall and another	Plumptree—Hawthorn and others, assignees, &c. v. The Newcastle-upon-Tyne & North Shields Railway Company, <i>special case</i>
	Coull & anor, exors. v. Hall & anor.	Lane—Lane v. Chapman, <i>dem.</i>
	Doe d. Jackson the elder v. Davis	Billing—Cleaton the younger v. Busby, <i>dem.</i>
	Merriman v. Buckerfield	Johnston—Watson v. Kightley, Gent., <i>dem.</i>
Cheeshire . .	The Queen v. Justices of Chester	Palmer & Co.—Children v. Mannerling, <i>dem.</i>
Ipswich . .	The Queen v. William Bullar	Swain & Co.—Rogers v. Norman, <i>dem.</i>
Hants . .	The Queen v. The Lord and Steward of the Manor of Bishops Stoke	Faulkner—Bottrell v. Wordsworth, <i>dem.</i>
Suffolk . .	The Queen v. The Justices of Suffolk	Palmer & Co.—Doe d. Lord Grantley v. Butcher and others, <i>special case</i>
	SECOND DAY.	Walker—Emms v. Cole, <i>dem.</i>
	Doe dem. of Mobbs v. Roe	Olive—Dempsey v. Homfray, <i>dem.</i>
	Doe several dems. of Mudd and an- other v. Roe	Jenings & T.—Littler v. Thomson, <i>dem.</i>
	Hidger v. Hood and another	Wathen—Dowell v. Hodgson, Esq. & anor., <i>dem.</i>
	Hidger & anr. exors. &c. v. Same ]	Action—Savory, ass. &c. v. Chapman, Esq., <i>dem.</i>
	SPECIAL PAPER.	Armstrong—Hasledon & anor. v. Almond, <i>dem.</i>
	Michaelmas Term 1839.	Starling—Liddle v. Brownson, <i>dem.</i>
E. Chester	Archbishop of York and others v. Trafford and others, <i>special case</i>	Burton—Horner v. Keppell, <i>dem.</i>
	Lambert—Ramsay v. Nomabell, ( <i>in replevin</i> ) <i>dem.</i>	Chisholm & Co.—Strachan, assignee, v. Thomas, Esq., <i>dem.</i>
		Trail—Bayntun v. Bayntun, <i>dem.</i>
		Beetholme—White v. Ruby, <i>dem.</i>
		Flower—Friend who sued, &c. v. Butterfield, <i>dem.</i>
		Dale—Bowler v. Nicholson, <i>dem.</i>
		Young & S.—Doe d. Sabin & ors. v. Sabin, <i>special</i>

*Billing*—Billing v. Suffell, *dem.*  
*Williams*—Harper v. Janson, the younger, *dem.*  
*Newton & E.*—Jones and another v. Edwards, *dem.*  
*Reed & S.*—Woodland & another, assignees, &c. v.  
 Fuller and another, *special case*  
*Dean*—Doe d. Booley & others v. Roberts, *spl. case.*  
*Dean*—Morris v. Wynne, *dem.*  
*Fosters & Co.*—England v. Davidson, *dem.*  
*Jackson & Co.*—Skipp v. Lackwood, *dem.*  
*Alger*—Dryrill v. Hoare and others, *dem.*  
*Same*—Scott v. Same, *dem.*  
*Lewis*—Levy v. Duthie, *dem.*  
*Same*—Same v. Duncombe, Esq., *dem.*  
*Watson, junr.*—Tidd v. Foskett, *dem.*  
*Wright*—Bernhead v. Warwick, *dem.*  
*Coode & B.*—Doe d. Lean v. Lean & ors., *spl. case.*  
*Roberts*—Price & wife v. Rolt & Wife, *dem.*  
*Sharp*—Colls & ors. v. Dauncey, 1st action, *dem.*  
*Same*—Same v. Same, 2d action, *dem.*

**Common Pleas.****REMANENT PAPER**

*Of Michaelmas Term, 3d Queen Victoria, 1839.*  
*Enlarged Rules.*

To 1st day . . Abbott v. Hopper  
 Bishop, executrix, v. Marsh  
 White v. Wood  
 White and another v. Wood  
 To 4th day . Alchin v. Hopkins, clerk  
 To 5th day . Medley & ors. v. Pritchard & anor.  
 To 6th day . Lewis v. Kirby  
 Until injunction be dissolved—  
 Poll v. Rogers

**NEW TRIALS of Michaelmas Term last.**

Middlesex . . Howell v. Brodie  
 " Beckett v. Wood  
 " Fitzgerald v. Williams  
 " Gouldstone v. Tovey  
 London . . Huntley v. Bulwer  
 " Dart v. Westcott and others  
 Northampton Edman v. Allen  
 Stafford . . Attwood v. Taylor and others  
 " Same v. Same

**NEW TRIALS of Hilary Term last.**

Middlesex . . Barron, surv. v. Fitzgerald  
 " Long v. Bilke  
 " Story v. Richardson  
 " Williams v. Baker  
 London . . Anderson v. Weston  
 " Green & anor., assessees., v. Cunnew.  
 " Gibson & ors., assessees., v. Bennett  
 " Gould & ors. v. Oliver  
 " De Pinna v. Carroll and another  
 Steinkeller v. Newton  
 " Fawcett & anor. v. Frost & anor.  
 " Edwards & anor. v. Scott & anor.  
 " Fergusson & ors., assig., v. Spencer  
 and another  
 " Magnay v. Knight  
 Brandon v. Smith  
 Cooper and others v. Cuttill  
 Hoye v. Bush

**NEW TRIALS of Easter Term last.**

Middlesex . . Stewart v. Crump  
 " Malins v. Freeman  
 " Doe (Goodbody and ors. v. Freeman  
 Shears v. Crease  
 " Wilson v. Lewis  
 " Wollaston and others v. Hakewell  
 " Archer v. English and another  
 " Ritchie v. Wilson.  
 " Tyrrell v. Woolley

London . . Norris and another v. Stamp  
 " Lamburn v. Cruden  
 " Abbott v. Hendricks  
 Chester . . Fernley v. Worthington  
 Merioneth . Probyn v. Edwards

**NEW TRIALS of Trinity Term last.**

Middlesex . . Dreury v. Hodson  
 London . . Hope v. West

**Cur. adv. Vult.**

Bonzi v. Stewart  
 Same v. Same  
 Morgan and another v. Miller  
 Lackington & ors., assessees. v. Combes  
 Earl Mansfield v. Blackburne  
 Same v. Same  
 Newton and ux. v. Harland  
 Devaux & another v. Steele  
 In the matter of Hare, Miln, and  
 Haswell  
 Harwood, assignee v. Bartlett  
 Morrell v. Martin  
 Hey v. Moorhouse and others.  
 Backhouse, assree. v. Jones & anor.

**DEMURRER PAPER**

*Of Michaelmas Term in the third year of the Reign  
 of Queen Victoria, 1839.*

Saturday	Nov. 2	Motions in Arrest of Judgment.
Monday	— 4	
Tuesday	— 5	
Wednesday	— 6	
Thursday	— 7	

**Friday 8th.—Special Arguments**

Doe (Marchant) v. Errington  
 Hill v. White and others  
 France & anor. v. Same  
 Byers & ors. assignees v. Southwell  
 Steanes & ors., ass. v. Wainwright  
 Beesley v. Dolley  
 Pisani v. Lawson  
 Devaux & anor v. Steinkeller  
 Belcher & ors. ass. v. Oldfield  
 Hill v. White and another  
 Lohmann v. Rougemont & anor.  
 Brook & ors. ass. v. Mitchell & ors.  
 Samson v. Rhodes  
 Dulley v. Linnell  
 Smith v. White  
 Cockburn & an. v. Wright & ors. ex.  
 Carswell, admor. v. Farncomb  
 Doe d. Capes exors. v. Walker  
 Pogson v. Thomas  
 Jenner v. Nash  
 Hunnybun v. Mitchell and another  
 Bruce the younger v. Waite and anor.  
 Low v. Stocken  
 Thornton v. Jenyns, clerk and others  
 Pilbeam v. Briggs  
 Lucas v. Eastes  
 Poulters v. Phillips  
 Houlditch and another v. Duthie  
 Gale v. Davis  
 Chew and another v. Eldridge  
 Hinde and others v. Gray  
 Houlditch and another v. Dun-  
 combe, M. P.  
 Middleton v. Chambers  
 Hodges v. Same  
 Waller v. Lacy  
 Ashdown v. Burgess  
 Bristow v. Fairclough  
 Thompson & anor. v. Farden & ors.  
 Walbancke v. Allen the younger

Smith and others v. Nicholls  
 Billing v. Kightley  
 Crawshay and others v. Barry  
 Drummond and others v. Lowther  
 Saturday 9th November  
 Monday 11th —  
 Tuesday 12th —  
 Wednesday 13th — *Special arguments*  
 Thursday 14th November

Friday 15th—*Special Arguments*  
 Saturday 16th  
 Monday 18th  
 Tuesday 19th  
 Wednesday 20th—*Special Arguments*  
 Thursday 21st  
 Friday 22d  
 Saturday 23d  
 Monday 25th—*End of Term*

## Exchequer.—BEFORE LORD ABINGER.

	<i>Banc.</i>	<i>Equity.</i>	<i>New Prints.</i>
Saturday, Nov. 2,	-	- Petitions and Motions	—
Monday — 4,	—	— Paper of Gen. Business	—
Tuesday — 5,	-	—	Middlesex, 1st Sittings
Wednesday — 6,	-	—	Ditto by Adjournment
Thursday — 7,	-	—	—
Friday — 8,	-	— Petitions and Motions	—
Saturday — 9, Errors and Lord Mayor sworn	—	—	—
Monday — 11, Special Paper	-	—	London, 1st Sittings
Tuesday — 12, Errors & Sheriffs chosen	—	—	—
Wednesday — 13, Special Paper	—	—	—
Thursday — 14,	-	— Petitions, Motions and Short Causes	—
Friday — 15,	-	—	Middlesex, 2d Sittings
Saturday — 16,	-	—	Ditto by Adjournment
Monday — 18, Special Paper	-	—	Ditto ditto
Tuesday — 19,	-	— Petitions and Motions	—
Wednesday — 20, Special Paper	-	—	—
Thursday — 21,	-	—	London, 2d Sittings
Friday — 22,	-	— Paper of Gen. Business	Ditto by Adjournment
Saturday — 23,	-	— Petitions and Motions	—
Monday — 25,	—	—	—

## PEREMPTORY PAPER,

For Monday 4th November, 1839.

To be taken at the Sitting of the Court.

Wise and another, executors, &c. v. Parkes

Robinson v. Powell

In the arbitration between Edward Biggs and others

Bird v. Penrice

In re James Moore, Gent. one, &c.

Anderson and others v. Chapman and others

Yorston v. Clay and another

Jones v. Williams and others

Gurney v. Sandys

In the matter of William Horne, administrator, &c.

Smith, assignee, & ano. v. Pole, Bart. & ors.

Brass v. Marples and another

Brass v. Marples

## SPECIAL PAPER.

Standing for Judgment.

Hills and others v. The London Assurance. (Heard 27th May, 1839)

Spry v. Bromfield. (Heard 5th June, 1839)

## For Argument.

Hughes, Public Officer, &c. v. Thorp

Sheppard v. Woodford and others

Doe, several demises of Kellyar & others, v. Broad

## NEW TRIAL PAPER.

Standing for Judgment.

Moved Easter Term, 1839.

Brashier v. Jackson. (Heard 25th May)

Pratt v. Arnold. (Heard 11th June)

Davies v. John Humphreys. (Heard 11th June)

To increase damages to 165l.

Davies v. John Humphreys. (Heard 11th June)

To set aside verdict and enter a nonsuit

Davies v. Evan Humphreys. (Heard 15th June)

## For Argument.

Moved Easter Term, 1839.

Turvey v. Clatworthy

Burgh v. Legg

Warde v. Bryne

Jones v. Collett

## THE EDITOR'S LETTER BOX.

"An Articled Clerk" is informed that the work regarding which he inquires, contains the alterations in the Law of Real Property effected by the statute 3 & 4 W. 4.

We will endeavour to find room for the judgment on *Salomon's case*. We are obliged to our correspondent.

In consequence of further suggestions, we have arranged for the publication of the entire

Lists of Causes in all the Courts, thus shewing the actual state of business in all the Courts; and as this will occur only at the commencement of each term, when we have but few, if any, new reports, we hope to find room for the lists without exceeding our usual space, or increasing the expense of the work.

A friendly correspondent suggests, that though the Legal Observer is unstamped, yet any particular number may be transmitted by post as a single letter, by folding it, uncurling without the cover, and marking it "single."

# The Legal Observer.

SATURDAY, NOVEMBER 9, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## RULES FOR EFFECTING LIFE INSURANCES.

We presume that to our readers any general encomiums on life insurance must be entirely useless. Professional men, being more or less dependent on income, are especially a class for whom insurance societies are desirable; and how extensively lawyers avail themselves of the advantages they offer, the records of many of the offices in London would show. Besides, we frequently have to advise others in this matter. We think, therefore, it may not be useless to throw out for their consideration some rules for selecting an office which may be adopted either on entering into a new engagement of this sort, or on increasing an old one; for after some experience of the great benefits they confer on the profession, we are inclined to say

“Let those insure who ne'er insured before,  
And those who have insured, insure the more.”

The hints we shall give have been suggested to us by an article in the October number of the Quarterly Review, which expresses in the main our own opinions; and we shall therefore advert to some of the topics touched on by the Reviewer, evidently a person well informed on this subject. And first, as to selecting an office. “Perhaps the safest rule,” he says, “for making a prudential choice, is to look well at the list of directors. If these are men of known integrity, of aptitude for business, moving in some public sphere, and of substantial property, one may feel on pretty safe ground,—such men are not likely to lend their names to any visionary undertaking, nor to require any ostentatious array of noble lords, honourables or right honour-

ables, to bolster up the institution which they direct.”

Next we shall take what is said as to what are called the *cheap offices*. “When a person is making up his mind as to the choice of an office, it is very natural that his election should be likely to fall on that which offers the most reasonable terms—that is to say, where the amount of premium to be paid for a hundred pounds is less than in others; but this difference in the premium is not the only thing to be regarded. The difference of a few shillings per cent. more, especially in a proprietary and participating establishment, is, we repeat, of little importance, provided they keep within the limits of those tables which have been constructed on the law of mortality, as deduced from the most approved statistical information, collected and registered from details of numerous large and distinct masses of the population of this and other countries.”

Next as to the question of an office *with* profits and *without* profits. “The great importance of choosing an office which allows a participation of profits, is exemplified by a report put forth by the ‘Rock,’ in which it is stated, that ‘in the case of a royal personage lately deceased, whose life was largely insured for the benefit of his family, the directors found by a document in their possession, that out of eleven offices granting him policies, all at the same time, and at a rate of premium varying from 4*l.* 4*s.* 2*d.* to 5*l.* 0*s.* 2*d.* per cent. (that of the Rock being 4*l.* 8*s.* 2*d.*), only five made any return of premium or additional bonus.’ If the office be well selected, we have no hesitation in saying that life insurance in an office with profits offers the most desirable investment for small annual savings,

independently of the ultimate gain on the sum insured.

The next point to which we would call attention is the interest which the person who insures must have in the life insured. We have already given our attention to the consideration of this question, and our readers will find the law on the subject stated in former volumes.<sup>a</sup>

By statute 14 G. 2, c. 48, no life insurance shall be valid unless the party insuring has a legitimate interest in the life of the party insured. A creditor has clearly such an interest in the life of his debtor;<sup>b</sup> but it has been held that a husband or father has not such an interest in the life of his wife or child as to enable him to insure his or her life.<sup>c</sup>

The Reviewer does not state the law on this point, but after alluding to the Stat. of 14 Geo. 3, he says "The act of G. 3, is in fact a dead letter. It merely enacts the voidance of the policy. Will the holder, if rejected, prosecute the claim? would he be entitled to a verdict? and what damages could be obtain? The two parties, the assured and the office, are frequently *participes criminis*, and both interested in keeping up the policy; and what is a third party (who holds the policy) to gain by rendering it void? The only gainer would be the office, from the premiums that may have been paid: *the act does not say that they shall be refunded, nor does it award any penalty on the offenders.*"

This is a very important consideration for any person effecting a policy on an insufficient interest.

Another topic which is adverted to, is the usual practice of paying a commission to agents, solicitors, or brokers, who bring assurances to their respective offices. This practice has been condemned by Mr. Babbage and others, but the Reviewer does not agree in this censure. "We would ask (he says) what is a poor man living in the heart of Wales, and wishing to effect an insurance, to do but to apply to his man of business, or the agent of some office, who must take his examination--send it up to the office--employ a medical man, &c. &c.? and can it be expected he should do all this without remuneration? We believe that the whole of the country business with the

offices in London, is and must be transacted through agency, and though each agent may have his peculiar office, yet it is undoubtedly his duty to explain to his private employers, as far as he knows the different terms on which different offices grant assurances."

We shall conclude these few remarks with the list which the Reviewer gives of the various offices now in existence, which he classifies into three septennial periods of existence. It is evident that as a general rule, the longer an office has existed, the greater stability it has; but this is by no means a certain criterion. Thus we find the "Law Life" established in 1823, in extent of business almost at the head of the whole, and in the first septennial period, we find at least two, "The Legal and General," 1836, and "The Family Endowment," 1835, of acknowledged importance for business and good management.

#### *First Septennial Period.*

Argus, established in	.	.	1834
Britannia	.	.	1837
British Colonial	.	.	1838
Family Endowment	.	.	1835
Freemason's and General	.	.	1833
Hand-in-Hand	.	.	1836
Independent	.	.	1836
Legal and General	.	.	1836
Metropolitan	.	.	1835
Minerva	.	.	1836
Mutual Life	.	.	1834
National Endowment	.	.	1838
National Loan Fund, &c.	.	.	1837
Protector	.	.	1836
Standard of England	.	.	1836
United Kingdom	.	.	1834
Universal	.	.	1834
Victoria	.	.	1834
Westminster and General	.	.	1837
York and London	.	.	1834

#### *Second Septennial Period.*

Crown	.	.	.	1825
Notional	.	.	.	1830
Promoter	.	.	.	1826
University	.	.	.	1825

#### *Third Septennial Period.*

Alliance	.	.	.	1824
Asylum	.	.	.	1824
British Commercial	.	.	.	1820
Clerical, Medical, &c.	.	.	.	1824
Economic	.	.	.	1823
Edinburgh	.	.	.	1823
European	.	.	.	1819
Guardian	.	.	.	1821
Imperial	.	.	.	1820
Law Life	.	.	.	1823
Palladium	.	.	.	1824
Scottian Union	.	.	.	1824

<sup>a</sup> See 2 L. O. 330; 4 L. O. 25, 53. As to concealments on effecting policies, see 12 L. O. 89.

<sup>b</sup> *Anderson v. Edie*, Park on Insurance, 640. 7th edition.

<sup>c</sup> *Holford v. Kymer*, 10 B. & C. 722.

*Fourth Septennial Period.*

Albion . . . . .	1805
Anicable . . . . .	1706
Atlas . . . . .	1808
Caledonian . . . . .	1805
Eagle . . . . .	1807
Equitable . . . . .	1762
Globe , . . . . .	1803
Hope . . . . .	1807
London Life Association . . . . .	1806
Licensed Victuallers . . . . .	1721
London . . . . .	1721
North British . . . . .	1809
Pelican . . . . .	1797
Provident . . . . .	1806
Rock . . . . .	1806
Royal Exchange . . . . .	1720
Scottish Widows' Fund . . . . .	1815
Union . . . . .	1714
West of England . . . . .	1807
Westminster Society . . . . .	1792

## CHANCERY REFORM.

## No. II.

## TAXATION OF COSTS.

We shall next turn, in the prosecution of our inquiries as to the necessary reforms in Chancery, to the taxation of costs by the clerks in court. We have already seen that the Chancery Commissioners of 1825 disapprove of the present mode. (See *ante*, p. 1. n.)

It is well known that the Masters in Chancery are the officers who are presumed to tax the costs of solicitors, whether between party and party or solicitor and client, and they certify to the court the amount at which the costs are taxed; but practically the business is done by the clerks in court, unless the Master's opinion should be required on some point which the solicitors require to be personally submitted to him.

And how is the taxation in Chancery conducted? We are told the course is this:—there are a multitude of bills of costs in various suits, in which ten or twelve clerks in court are engaged for some or other of the parties. Instead of each bill being taxed, item by item, by a proper officer in the presence of the solicitors concerned, who alone are acquainted with the facts, the clerks in court divide the bills amongst them as it suits their convenience, and without sufficiently considering the peculiar circumstances of each case, they follow a general rule which saves much trouble, and then each clerk in court charges his fees for his respective clients, as if he had attended the Master on the taxation of each bill.

Now when it is recollect that the costs of a chancery suit generally amount to several hundred pounds, and sometimes to several thousands, the magnitude of the rights of the suitors ought not thus to be dealt with. The true amount of costs ought to be as carefully ascertained as the items of an executor's account. This should be done both in justice to the client and the solicitor; the one should pay and the other receive such sum as, under all the circumstances, may be fair and just, neither more nor less.

Whilst treating of the mode of taxing costs, it is proper to consider whether any change should take place in the principle of taxation. Our readers will recollect that this subject, particularly in regard to the charges in conveyancing, was under the consideration of the Real Property Commissioners, and they, in noticing the alteration which the scheme then agitated of a general registry would make in the emoluments of solicitors, observed, "that there is a considerable part of the duty of solicitors requiring much skill and care, and imposing great responsibility, for which they are at present very inadequately remunerated." And the Commissioners added, "we think it is for the public good that solicitors should be liberally remunerated for their services. Considering the confidence reposed in them, and the intelligence and skill required from them, it is desirable that they should be men of education and of honourable feelings, and should occupy a respectable station. In our opinion it would be highly inexpedient that the rank which they hold in the country should be lowered." The commissioners, adverting to the diminution of charges on abstracts and copies which a general register would effect, recommended that "the fees of solicitors for actual services, should be higher than they are at present," adding, "perhaps some mode of regulating them, which now exists only with respect to costs of actions and suits, might be beneficially introduced. This subject, (they said) requires great consideration, and due attention to the suggestions which may be obtained from the leading members of that part of the profession." The unsatisfactory state of the present practice of chancery taxation must sooner or later lead to an alteration; and it may be worth the attention, therefore, of our readers, to consider what the change should be, and whether it should in any and what respect extend to conveyancing?

It cannot for a moment be supposed that the duty of taxation can be properly per-

formed by the Masters in Chancery. They have neither time nor technical knowledge to fit them for the task. The clerks in court, as a body, have passed through no course of practice like that of a solicitor which can enable them rightly to appreciate his services, or to hold the balance with an even hand between the solicitor and the client. It is manifest that solicitors who have been in extensive practice, are, of all persons the most competent to estimate the proper charges, because they know the labour bestowed, the difficulties overcome, and the responsibility incurred by the solicitor, and when their personal interest ceases by retiring from practice, we should suppose the suitor or parties would be satisfied with their decision. It will be recollected that in assessing the amount due to a merchant or tradesman for goods or work, the court and jury are obliged to rely on the evidence of persons engaged in the same kind of business, to prove the reasonableness of the claim. So far indeed from its being objectionable to entrust the duty of taxation to solicitors, we incline to think they are as likely as any other class of persons to deal strictly with their former brethren, and their practical knowledge would certainly enable them to detect any attempted overcharge. It might, however, be more satisfactory to the public if a proportion of the taxing officers were chosen from the bar; the union of members of both branches of the profession, would probably secure general approbation. A board thus constituted, should, however, be guided by a set of regulations which would apply to all ordinary cases; but they should have a discretionary power to make larger allowances on special occasions, subject to revision by one of the Superior Courts.

If such a board of taxation were established, its certificate of allocatur should have the effect of a judgment, for it would be but reasonable that if the client were enabled to tax a conveyancing bill which now can be contested only before a jury, the solicitor should stand in the same situation as if a trial had taken place; the taxing officers being substituted for the jury, who even now must depend on the testimony of other solicitors regarding the fairness and usual amount of the items.

Other suggestions might be made, but we have said enough for the present to call attention to the subject.

## NOTES ON EQUITY.

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### THE CUSTODY OF INFANTS ACT. 2 & 3 VICT. c. 54.

**BLACKSTONE** says, with respect to the power of a mother over her children, that, "as such, she is entitled to no power, but only to reverence and respect, (1 Com. 452,) and Mr. Stewart, in his edition leaves this text unaltered, but adds this note: "This has been very recently so held, both at law and in equity, *Skinner v. Skinner*, 9 Moo. 78; *Rex v. Greenhill*, 6 Nev. & M. 244; *Ball v. Ball*, 2 Sim. 35."—Rights of Persons, p. 488. Thus stood the law until the last session of parliament, when the Custody of Infants Act was passed, which was, when originally brought in, intended to have a much more extensive operation. The act is printed 18 L. O. 356. It will be seen that all that is done by it as it passed, is to enable the Lord Chancellor, [Vice Chancellor], and the Master of the Rolls, both here and in Ireland, "if they shall see fit," to order the mother access to any infant child in the custody of the father or of any person by his authority, or of any guardian after the death of the father, under such regulations as the judge shall deem convenient; and if the infant shall be within seven years of age, such infant may be delivered to and remain in the custody of the mother until attaining such age, subject to such regulations, (s. 1.) But no mother against whom adultery has been established shall be entitled to the benefit of the act, (s. 4.) Under these circumstances, application may be made by petition under the act.

### FOREIGN MONARCH.

We have recently seen that a foreign monarch is treated precisely as any other suitor in our Courts of Law, if he comes there voluntarily. We shall now show that the same rule obtains in Equity. "I am of opinion," says Mr. Baron Alderson, "that her most faithfl Majest, being a suitor voluntarily in a Court of English Law, becomes subject in all matters connected with that suit to the jurisdiction of the Court of Equity (the Equity Exchequer); that the discovery prayed by this bill is material to the plaintiff's defence at law in that suit, and that this demurrer is too large and must be overruled, and that it should be with costs. The demurrer was, that as a sovereign, the suit was not maintainable against the Queen. *Rothschild v. Queen of Portugal*, 3 Yo. & Col. 594.

HUSBAND AND WIFE.

If a wife agrees to waive the further prosecution of an indictment against her husband for an assault, in consideration of his allowing her an annuity by way of separate maintenance, this is an illegal contract, though entered into with the sanction of the court in which the indictment is to be tried, and the wife cannot claim the arrears of the annuity as a debt against her husband in competition with her husband's creditors. *Garth v. Earnshaw*, 3 Yo. & Col. 584. As to the effect of separation between husband and wife, see 18 L. O. 371.

THE NEW JUDGE.

We believe that the Solicitor General is to be the new Judge, and Mr. Sergeant Wilde Solicitor General. It will be remembered, that some weeks ago, on the death of Mr. Justice Vaughan, we augured that this would be the most probable arrangement; (see 18 L. O. 451.) At the time we write this (Wednesday) the appointments have not been actually made, but the only reason for the delay is, we understand, that it is intended to remove Mr. Baron Maule into the Common Pleas, and to appoint Sir R. Rolfe to the vacant seat in the Exchequer Bench. This will certainly be the more desirable plan, as although not entirely unacquainted with common law practice (having gone the Norfolk circuit in former times with much success), yet he is, of course, more familiar with equity, which will probably be assigned to him in the Exchequer. The plan of a settled Court in Equity Exchequer may thus be easily tried, and it may be seen what relief it will afford the Court of Chancery. We forbear making any further remarks on those appointments until they are officially announced.

THE SERJEANTS.

The Sergeants have again risen, and the Court of Common Pleas has been in a state of much agitation since the first day of term. Taking Mr. Sergeant Wilde for their leader, they have abandoned the seige of the Privy Council, and set themselves down in great force before the citadel of the former Court. Whether they will become masters of it is yet to be seen. They have at any rate so far had it all their own way, no other party appearing. We have heard indeed that in

the midst of the attack a bagpipe was heard playing—

"The Campbells are coming,"

but we believe this is a mere idle rumour.

We have been favoured with a series of melodies, composed on this melancholy occasion, which are entitled the "Lays of the last Serjeants." They are somewhat unsuited to our pages, but we trust our graver readers will pardon our giving one or two of them, and that even the learned "band of brothers"<sup>a</sup> may excuse our correspondent's nonsense verses.

THE SERJEANTS' TEARS.

Sergeant Wilde wept like a child,<sup>b</sup>  
Sergeant Taddy declares he'll go mad;  
Sergeant Spankie looks perfectly blank;  
Sergeant D'Oyly is on the boil;  
Sergeant Adams, "I wish Old Nick had 'em;"  
Sergeant Andrews, coif and bandrues;  
Sergeant Stork declares he can't talk;  
Sergeant Ludlow lies in the mud low;  
Sergeant Scriven's heart is riven;  
Sergeant Stephen's mind's uneven;  
Sergeant Bompas is all of a rumpus;  
Sergeant Goulburn's very soul burns;  
Sergeant Merewether, "There's nothing like leather;"  
Sergeant Heath declares it's his death;  
And Sergeant Talfourd is only half heard.

REFORM IN THE RECORD OFFICES.

It will be recollect that by the 1 & 2 Vict. c. 94, the Master of the Rolls was appointed Keeper of the Records of the Kingdom, with power to appoint an Assistant Record Keeper, and proper clerks, &c. We trust that the late long vacation has enabled his Lordship to make some progress in the intended improvement of the Record Offices. We hear that in several of them the practice is still continued by some of the clerks of acting as agents in record cases. We understand the Master of the Rolls intends to abolish this grievance: it is a very serious one, and we hope his Lordship will not defer carrying his determination into effect.

We are told, that on one occasion, where a clerk in a Record Office was engaged for one of the parties, a record of great im-

<sup>a</sup> Shakespeare evidently had the Court of Common Pleas in his eye when he wrote the line,

'We few, we happy few, we band of brothers!'

<sup>b</sup> The rhymes are in several instances very defective, which the indulgent reader is requested to forgive.

<sup>c</sup> This is an abominable cockneyism: it shall be amended in a second edition.

portance was not to be found in its usual place, the clerk having, as it afterwards turned out, removed it for the purpose of translation for his client, and had not replaced it. The opposite party proceeded to trial, confident that the Record in question, for which diligent search had been made, did not exist. When the trial came on, the Record was unexpectedly produced, and the party against whom it was given in evidence lost his cause. The evil was partially cured by a new trial, on the ground of surprise, but at great expense. It may be that the omission to restore the document was purely accidental; but whatever might be the cause, it is manifest that no officer, having the custody of public documents should be open to the suspicion of acting unfairly.

If inadequate salaries are paid to the Record Clerks, the amount should be increased, so that they may devote their time to preparing indexes, and properly arranging the documents in their charge, whereby such mischiefs as that we have alluded to may be altogether prevented. It is universally acknowledged that no Judge can be more anxious to discharge his duty than the present Master of the Rolls, and we therefore look forward to an early and effectual remedy of the evil in question.

#### CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT. No. XII.

2 & 3 Vict., c. 39.

*An Act to amend an Act passed in the last Session of Parliament, for abolishing Arrest on Mesne Process in Civil Actions except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England.*  
[17th August, 1839.]

**1 & 2 Vic. c. 110. Repeal of Provision in recited act respecting insertion of advertisements.**—Whereas by an act passed in the last session of Parliament, intituled “An Act for abolishing Arrest on Meane Process in Civil Actions except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the relief of Insolvent Debtors in England,” it was amongst other things enacted, that the sum of three shillings and no more shall be paid to any printer or proprietor of a newspaper for the insertion of any advertisement by that act directed to be inserted in any newspaper, and all printers and proprietors of newspapers were thereby required to insert the same, on pay-

ment of the said sum of three shillings for the insertion thereof, in such form as the court for the relief of insolvent debtors, or any commissioner thereof, should from time to time direct: And whereas it is just and expedient that the said act should be altered and amended as herein-after mentioned: Be it therefore enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, that so much of the said act as is herein before recited shall be and the same is hereby repealed; and that from and after the passing of this act all printers and proprietors of newspapers shall and are hereby required to insert any advertisement or advertisements by the said recited act directed to be inserted in any newspaper, on payment of a reasonable compensation for the insertion thereof, in such form as the said court, or any commissioner thereof shall from time to time direct.

**2. The Court may appoint persons to receive recognizances.**—And whereas it is expedient that persons residing at a distance greater than ten miles from the court house in Portugal Street who may be willing to enter into recognizances of sureties for the due appearance of insolvent debtors before the court, or before commissioners on their circuits, or before justices of the peace in Berwick-upon-Tweed, should be enabled to enter into such recognizances without the necessity of appearing for such purpose before the court itself at its usual and ordinary place of sitting; be it therefore enacted, that the chief commissioner and either the commissioners of the court for relief of insolvent debtors for the time being shall and may, by one or more commission or commissions under the seal of the said court from time as occasion shall require, empower such and so many fit and proper persons as they shall think necessary, in all and every the several towns and counties within England and Wales and the town of Berwick-upon-Tweed, to take and receive all and every the recognizance or recognizances of sureties into which any person shall be willing to enter into for the due appearance of insolvent debtors according to such several and respective recognisances, and in such form as the court, in pursuance of the statute in that behalf, may and shall direct and require.

**3. Persons empowered to enter into recognizances, &c.**—And be it enacted, that in any case of a prisoner whose estate and effects shall have been or shall hereafter be, by order of the Court for the Relief of Insolvent Debtors, vested in the provisional or other assignee, and who shall be confined in the gaol of any county, town, or place other than in London, Southwark, Middlesex, or Surrey, and who shall have filed his schedule in the said court according to the statute in that behalf, it shall and may be lawful for any person or persons who may be willing to enter into such recognizances as before mentioned, whose usual and ordinary place of residence shall be distant

more than ten miles from the Court House in Portugal Street, London, to appear before a person duly appointed and empowered in manner aforesaid, and there to enter into and acknowledge such recognizance of sureties for the due appearance of the insolvent, according to such forms and in such terms and manner as shall or may be prescribed by the said court; which said recognizances of sureties so taken as aforesaid shall be transmitted and filed in the said court, with an affidavit of the due taking of the said recognizances of such sureties by some credible person present at the taking thereof, upon payment of such fees as have been usually received for the taking of recognizances in the said court; which recognizances so taken, transmitted, and filed shall be of the like force and effect as if the same were taken before the said court; for the taking of every such recognizance of sureties the person or persons so empowered shall receive only the sum or fee of two shillings and sixpence and no more.

**4. Commissioners to make rules for regulating the amount and the taking of recognizances.**—And be it enacted, that the commissioners of the said Court shall make such rules and orders regulating the amount and for the taking of such recognizances as to them shall seem meet, so as such sureties be not compelled to appear in person in the said Court to justify themselves, but the same may and is hereby directed to be determined before the said Court, or a commissioner thereof, by affidavit or affidavits duly taken before the person or persons so empowered as aforesaid, who are hereby empowered and required to take the same.

**5. Commissioners empowered to take such recognizances**—And be it enacted, that any commissioner of the said Court on his circuits shall and may take and receive all and every such recognizances of sureties as any person or persons shall be willing to make and acknowledge before him, which, being transmitted, shall without oath be filed in manner aforesaid, upon payment of the usual fees.

**6. Court to order discharge of insolvent when sureties justified by affidavit, &c.**—And be it enacted, that as soon as such sureties shall have justified by affidavit in manner aforesaid, and such recognizances as herein before mentioned shall have been filed, the said court shall thereupon issue a warrant to the gaoler for the discharge of such insolvent from custody accordingly, and who shall have such and the like privileges and be subject to the like liabilities as the statute in that behalf directs.

**7. Commencement of act.**—And be it enacted that this act shall commence and come into operation on the first day of October one thousand eight hundred and thirty nine, except where any other commencement is specified in this act.

## UNITED LAW CLERKS' SOCIETY.

The following is the Seventh Annual Report of this Society, read at the Anniversary Meeting, held on the 13th August, 1839. Michael Clayton, Esq. in the Chair:

"After the experience which seven years has afforded of the utility of this Society, it must be considered unnecessary to enter into any statement in corroboration of that fact; the best proof of it is to be found in the great success which has attended the progress of the Society;—and it is a fortunate circumstance, of which few institutions can boast, that the history of its affairs from its origin, presents an unchequered career of uniform advance and prosperity. But with this most cheering result must be associated feelings of gratitude to the profession whose zealous support has been constantly rendered in a manner, highly creditable to their liberality and benevolence.

"It will, therefore, be obvious, that the Society should from time to time present to its benefactors and members some account of the management of the resources which they have placed at its disposal; and for this purpose it again devolves upon the Secretary, in this, the Seventh Annual Report, to enter briefly upon such a statement as will satisfy both the donors and the members, that its funds have been honestly and judiciously appropriated.

"The entire income of the Society may be divided into two branches—one, which arises from subscriptions and donations to the General Benefit Fund, and the other, from subscriptions and donations to the Casual Fund; and in shewing the state of the accounts it will be necessary to keep the transactions of each fund under distinct heads.

"The first, and principal branch is, the General Benefit Fund, upon which is charged all allowances and payments in respect of sickness, superannuation, and death: and in reference to the annual statement, made on the 6th of April last, it appeared that the capital of the Society then amounted to 2,448*l.* 12*s.* 10*d.*, shewing an increase since the last year, of 608*l.* 2*s.* 7*d.*; being an excess in the receipts over the expenditure of the current year, and which forms the saving of the Society during that period; although it might reasonably be expected from the increase of the members, that its liabilities and expenditure would be greater, it is most satisfactory to state, that the savings of the present year are larger than that of any one which has preceded it.

"In carrying on the management, and regulating the expenditure of the Society, the utmost efforts have been made to add to its accumulation already invested with the commissioners of the national debt, for the purpose of forming a guarantee or reserve fund, in case of any unexpected pressure or claims upon the society; and it will be seen from the half yearly account, made up to the 20th of May last, that the sums invested up to that date, amounted to 2,375*l.* 7*s.* 11*d.*, and adding 42*l.* 18*s.* 8*d.*, the half year's interest then due thereon, and a subsequent investment of 20*l.*

not yet brought into that account, the total deposit and interest with the commissioners of the national debt at the present time, have increased to 2,618*l.* 6*s.* 7*d.*

"From this account it will appear that the whole capital of the society, except a small sum reserved for its current expenses, has been transferred from the hands of the treasurer, into the names of the trustees at the National Debt Office, where it is left to accumulate at a fixed interest of 3*l.* 16*s.* 8*½d.* per cent.

"It becomes necessary to enter into these details, to shew that the Society's resources are increasing, and to remove any doubt which exists of its safety, as well as its capability, to provide for all the benefits offered by its rules: there still being a numerous class of persons who have yet to avail themselves of its provisions; and it is hoped that the members of the profession, who have been desirous of promoting its welfare, will urge upon their own clerks the prudence of joining it, and of becoming, should adversity overtake them, participants in a fund intended more extensively to diffuse its benefits.

"The general revision of the rules, will, in the course of the next year, come under consideration. Past experience having suggested a modification of many of their provisions so as to adapt them to the altered circumstances and prospects of the society; and it being considered practicable to extend its operations, to increase its benefits, and to remove some of the restrictions at present existing, it is confidently expected that any plan emanating from this society, tending to elevate and improve the condition of law clerks, will meet with the same encouragement which has been extended to its former, and hitherto successful efforts; and it cannot be doubted that still greater good may be accomplished, particularly if the great body of clerks become sensible that their happiness, as well as interest, can be secured by acting upon principles of mutual advantage and support.

"Since the publication of the last report, the secretary is able to announce an accession of many eminent members of the profession as donors; and among others the Honorable Mr. Justice Littledale, Mr. Serjeant Andrews, the Honorable Mr. Justice Patteson, the Right Honorable Sir N. C. Tindal, the Registrars of the Court of Chancery, Messrs. Baxendale, Tatham, and Co., Messrs. Bourdillon and Sons, Messrs. Home, Loftus, and Young, Messrs. Roy, Blunt, and Co., William Tooke, Esq., Mr. Alderman Thomas Wood, Mr. Alderman Harmer, and Sir George Stephen. Many other names could be mentioned if the limited extent of this report would admit of it, to shew the increasing confidence entertained by the profession in this society, us representing a large and industrious body of men.

"The next subject to which it is necessary to advert, and one of great importance, as affecting the prospect of the Society, is the number of claims made upon it during the year. It appears that nine cases of sickness have oc-

curred, being the same number as that of the former year, to all of which the present fixed allowance of one guinea per week has been made; the four most severe cases have terminated in death, and the sum of 200*l.* has been paid to their nominees and widows, being an allowance of 50*l.* to each; and it may here be stated, that further assistance is frequently extended to the widows of members, in addition to the above allowance, should their future circumstances ever require it.

"It will, on reflection, be apparent, that as the number of members has increased since the last year, without any increased demands on the funds, the sickness and mortality must be considered to have proceeded in a decreased ratio, a circumstance indicating the general good health of the members of the society; but there is one case of superannuation, which still continues, being that of a member afflicted with paralysis, and who has received a weekly allowance for some years past.

"The next and subordinate branch of income and expenditure, is in respect of the casual fund, which is appropriated to loans and temporary assistance to members, in addition to the general benefit fund, and in relieving persons unconnected with the society, being clerks, their widows and families. The balance in hand on the 1st day of July last, the date of the last audited account, amounted to 123*l.* 18*s.* 5*¾d.*, consisting of money subscribed by the members, and a proportion of the donations occasionally appropriated to this fund, for the purpose of carrying out more efficiently, its various benevolent objects.

"In the course of the year, advances of 5*l.* each, have been made to ten of the members, requiring them to be repaid by instalments on their personal security. Fifteen deserving applicants for relief have been assisted by various sums, awarded according to the nature of each case, strict inquiry having been previously instituted in all. Others were found to be undeserving, or to have been too much in the habit of relying upon the mistaken sympathy of the Profession towards them. From the experience the society has already had in this department of expenditure, it feels justified in recommending the greatest caution in administering relief, not only to prevent imposition, but as the only means of checking the increase of a practice most degrading in its tendency on the future prospects of the individuals themselves; and in order to aid the exertions of the society in suppressing all casual and uncertain charity, it is earnestly requested that the profession will co-operate by sending cases for investigation and relief, employment having been obtained for some, and small gifts of money given to others, who appeared to be industrious and deserving persons.

"The library for reading and reference, has been found useful among the junior members of the society, and the registry which is established for supplying clerks with situations, furnishes the society with the means of procuring employment for the members requiring it, and a source from which the profession may

be supplied with clerks of respectability and good character.

"In concluding a retrospect of the past year, it might be considered presumptious to point out more fully the services which this society has rendered to the body of law clerks, since its commencement. Its records for seven years will attest the extent and utility of its exertions. Entering originally upon an undertaking of doubtful issue, it has silenced unmerited opposition, and secured patronage and success. While it has provided an asylum against vicissitude and want, it has promoted habits of industry and perseverance—the surest safeguards against them,—and, relying, on the approbation of the profession, it again respectfully ventures to solicit their powerful support, founded on the hope that it has already effected something towards deserving it.

[We are glad thus to afford space for the very satisfactory statement of the progress of this useful society, and earnestly recommend it to the continued and further support of all branches of the profession. ED.]

#### RE-ADMISSION OF ATTORNEYS,

*Last day of Michaelmas Term, 1839.*

##### QUEEN'S BENCH.

Baly, Charles, Canonbury Terrace; and Blackbrook, Kidderminster.  
Beardshaw, Thomas, Worksop.  
Bubb, Benjamin, Cheltenham.  
Borlase, James John Grenfell, Gloucester and Truro.  
Conolly, Jas., 3, Raven's Place, Hammersmith; and Parliament Street.  
Cole, Wm., Sudeley Street, City Road; and 64, Shepperton Cottages.  
Chadwick, James Wm., Long Ashton.  
Chester, Edward Matthew, Liverpool.  
Downes, Peter Joseph, 42, Primrose Hill, Salisbury Square.  
Evans, Wm., Martin, Gloucester,

Garratt, James, Ely Place, Holborn; Sidmouth; and Peckham Rye.

Grover, John Logan, 9, Weston Street, Pentonville.

Gore, Arthur, 51, and 31, Oxford Street.

Hingeston, Geo., Lyne Regis.

Heywood, Wm. Henry, Poulton.

Hall, James Tarbutt, 13, Clarence Place, Pentonville; and 12, Spencer Street.

Jackson, Wm., Kexborough; and Bank End; both near Barnsley.

Knight, Joel, Haverfordwest.

Monkton, John, 7, Barrett Street, Vauxhall; and Brook Street.

Price, Liscombe, Red Lion Street, Wapping.

Rippon, John, 5, Great Union Street; Kennington Causeway; and Walnut Tree Walk.

Rowles, Geo. Samuel Serjent, Richard Street; Star St., Islington.

Simpson, Wm. Robert, 8, Red Lion Street, Clerkenwell.

Seaman, Lewis, Otley.

Swinford, Henry Knott, Margate; France; and Belgium.

Saunders, Joseph, George Greenham, near Newbury,

Taylor, David Passmore, 9, Stringer's Buildings; Bridge Road, Southwark; and Hercules Buildings.

Williams, Benjamin Price, Luton.

Wynne, Llewelyn, Manchester Street, Manchester Square.

*Affidavit filed at the Master's Office on the 2nd of November.*

Parsons, Henry, North Petherton.

*Affidavit filed nunc pro tunc, pursuant to a rule of Court.*

Forrester, Gilbert Davis, Lincoln's Inn Fields; Brentford Butts; Greenhithe; Robert Street, and Saint Jame's Place, Hampstead, Road.

##### COMMON PLEAS.

Hodgson, Edward, 6, Symond's Inn; 5, Cecil Street, Strand; 13, Hatfield Street, Blackfriars.

#### ATTORNEYS APPLYING TO BE ADMITTED

*In Hilary Term, 1840.*

##### QUEEN'S BENCH.

Anstis, Bernard, 5, Beaufort Buildings; and Wadebridge.  
Abbott, Charles James, 36, Gower Street.  
Alcock, Thomas Crawhall, 3, Denmark Row, Camberwell; and Sunderland.  
Bullmore, Henry Orlando, 10, Wilmington Square; and Falmouth.  
Bircham, Merrick Bircham, 8, Devonshire Street; and Cambridge.  
Bigood, Thomas, 21, College Place, Camden Town.  
Brawley, Thomas Charlesworth, 3, Camden Terrace, Kentish Town.  
Brown, Henry Isaac, Bristol.

Matthew Anstis, Liskeard; assigned to Edmund Hambly, Wadebridge.

Charles Thelwell Abbott, New Inn.

Robert Wilson, Sunderland.

Francis Pendor and James Genn, Falmouth.

Francis John Gunning, Cambridge; assigned to Frederic Talbot, Bedford Row.

Charles Cook, New Inn.

Charles John Showbridge, South Square.

Thomas Dix, Bristol.

- Berry, Edward, Leicester; Sidmouth Street; and Hampstead.
- Bartlett, Robert Henry William, 31, Francis Street; New Milman Street; Southampton Row; Kenton Street; and Shepton Mallett.
- Bell, Adam, Manchester.
- Bond, James Wilfrid, Basingstoke; and Piccadilly.
- Brownlow, Richard, Bolton.
- Birch, Andrew Robert, Ashton-under-Lyne.
- Brown William, Manchester.
- Barrett, George, 9, South Square.
- Beaton, Charles, 45, Gower Place; and Bath.
- Bullock, John Henry, Chorlton-upon-Medlock.
- Bailey, Elijah Crosier, 16, King Street, Covent Garden; and Norwich.
- Beckitt, Henry Hugh, 50, Burton Street; Frederick Place; and George Street.
- Beunlands, Benjamin, Leeds.
- Bluck, Edward, Sheffield; Manchester; Lincoln's Inn Fields.
- Clark, William Fox, Beverley.
- Catchpole, William Smith, 19, Coleman Street.
- Chilcott, John Gilbert, 43, Gower Place.
- Chesshyre, Charles John, Shepherd's Bush.
- Cock, Peter, 15, Everett Street; and Truro.
- Chamberlain, Ayling, Portsea.
- Cross, Seth, Barnsley; and Trinity Terrace, Borough.
- Colley, William, 57, Upper Seymour Street; Boston; and Belgrave Street.
- Coulton, John James, the younger, King's Lynn.
- Cooke, George William Francis, 15, Sussex Place, Regent's Park.
- Clavering, John, 44, Devonshire Street.
- Cooper, John Martin, Bishopwearmouth.
- Cook, Henry, Kingston-upon-Hull.
- Crotty, Edward, Cross Street, Hatton Garden; Edmond's Place; and Brownlow Street.
- Coombs, Thomas, the younger, Dorchester; and Great Ormond Street.
- Davies, Edmund William, 46, Drummond Street; and Abergavenny.
- Samuel Stone, Leicester.
- Samuel Craddock, Shepton Mallett; assigned to Edward Michell, Shepton Mallett.
- John Law, Manchester.
- Charles Chatfield, 22, Cornhill.
- Edmund Haworth, Bolton; assigned to Adam Haworth, Bolton.
- William Slater, Manchester.
- Richard Maychell, Bolton-le-Moors; assigned to W. Christopher Chew, Manchester; assigned to William Hugh Myers, Manchester.
- William Barrett, Gray's Inn.
- Robert Cook, Bath.
- Alexander Thompson, Manchester.
- James Winter, Norwich.
- William Beckitt, Doncaster.
- George Sheppard, Otley.
- Robert Rodgers, Liverpool; assigned to John Morris, Manchester.
- James Baker Bainton, Beverley.
- Eleazar Lawrence, Ipswich.
- Henry James Leigh, Taunton.
- John William Fleetwood, Penkridge; assigned to Frederick John Manning, Dyer's Bdg.
- George Simmons, the younger, Truro.
- Daniel Howard, Portsea.
- Edward Newman, Barnsley.
- Meaburn Staniland, Boston.
- John James Coulton, the elder, King's Lynn.
- George Philips Foster Gregory, Poultry.
- George Delmar, 46, Lincoln's Inn Fields.
- Thomas Thompson, Bishopwearmouth; assigned to George Smith Rausow, Bishopwearmouth.
- Thomas Thompson, Kingston-upon-Hull.
- Richard Holier Atkinson, Southampton Buildings; assigned to Christopher Crouch, the younger, Southampton Buildings.
- Thomas Coombs, the elder, Dorchester.
- Baker Gabb and William Woodhouse Secretary, Abergavenny.

[To be continued.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

PROMISSORY NOTE.—LEGAL INTEREST.—CONSTRUCTION OF 3 & 4 W. 4, c. 98, s. 7.

*A. advanced to B. 1600*l.*, minus the interest thereof at the rate of 10*l* per cent. per annum, on his promissory note, payable in three months after date. The note was renewed four times within eighteen months, and the same rate of interest was charged on each renewal: Held, by the Lord Chancellor, reversing the decision of the Court*

*of Review, that the transaction was protected by the 7th section of the act 3 & 4 W. 4, c. 98, which allows any interest to be taken on bills or notes not having more than three months to run.*

*This was an appeal by petition from a decision of the Court of Review: and the petitioner, Mr. Reuben Terrewest, a solicitor, stated among other things that he had presented a petition to the Court of Review, claiming a *lien* on a sum of 263*l.* therein mentioned, in respect of a debt due to him*

from the bankrupt, Mr. John Poynter, upon the following promissory note: "London, 26th August, 1835. 1600*l.*.—Three months after date I promise to pay Mr. R. Terrewest, or order, one thousand six hundred pounds, value received. John Poynter, 92, Guildford, Street, &c." and thereby praying to be paid the said 26*l.*, and to be at liberty to go before the commissioner and prove for the balance which might be due to him after such payment of the sum of 113*l.* 1*s.* 8*d.* the amount remaining due on the said promissory note at the date of the issuing of the *stat* against the bankrupt; that on the hearing of the said petition, the assignees impeached the validity of the said debt on the ground of usury, upon evidence furnished by the petitioner, and which was to the effect that Mr. Poynter applied to petitioner to raise a loan of 150*l.* for him, on mortgage of certain estates; but there being some difficulty as to the title to the estates, petitioner offered to lend 1600*l.*, to be repaid out of the proceeds of estates which Mr. Poynter was about to sell. The petitioner was to discount a note for him for three months, at 10*½* per cent., including the cost of an insurance on Mr. Poynter's life; and when the note was made, he stopped out of the 1600*l.* a sum of 3*l.* which he had before advanced, together with interest on the whole sum for the three months, at 10*½* per cent. per annum; and he then told Mr. Poynter that if he wished to have the note renewed at the end of three months, he would renew it at the same rate of discount for twelve or eighteen months. If the estates were sold before three months, petitioner was to be paid, but if not, the understanding was that he would renew the note. Petitioner took the note under the new act (3 & 4 W. 4, c. 98),<sup>a</sup> in July, 1834. He contended at the hearing of his said petition, that the said note was within the protection of that statute. But the said Court dismissed the petition with costs, on the ground of usury.<sup>b</sup> The petitioner

applied for a special case, for the purpose of appealing, and one of the judges of the said Court granted a case, setting forth, after a short introductory statement, "That the Court, having fully heard and considered the proofs and allegations of the parties, found that, in fact, the note in question was given as a security for a pre-existing debt, and that no money was actually advanced thereon; that the debt mentioned in the note was money lent long before, for an indefinite time, not exceeding eighteen months, in consideration of the borrower agreeing to pay interest, at the rate of 10*½* per cent. per annum, and that a series of such notes should be given and renewed every three months, and that the note in question was the last of the series of five such notes, and that such notes were required by the lender merely as a shift and contrivance to evade the usury laws; and the Court did thereupon adjudge and decree that the contract for such loan was usurious, and the note was void, and that the said petition should be dismissed with costs. The appellant insisted that the said judgment and decree are erroneous in matter of law." The petitioner being advised that this special case was founded on an erroneous principle, and that he would be thereby excluded from all benefit of appeal on the construction of the said act; and being further advised that said special case consisted of assumptions not warranted by the facts proved, and that it was also defective and insufficient; he therefore prayed that his appeal may be heard otherwise than by special case, or together with the special case, or on the original petition, or in any other mode that would admit of an effectual appeal.

Mr. Wiggram and Mr. Anderson for the appellant.—The Court of Review found that there was an agreement to forbear demanding payment for eighteen months. There was no proof of such agreement. The Court below drew an erroneous conclusion from the evidence. There was a verbal understanding that the appellant would renew the note at the same rate of discount, and for the same period, if the bankrupt wished, but not after eighteen months, being in hopes the bankrupt would by that time have sold his estates. The note was clearly within the 7th section of the Act 3 & 4 W. 4, c. 98.<sup>c</sup> The appellant did not resort to any contrivance to evade the law, but he availed himself of the protection the law gave him. They relied on the cases of *Holt v. Miers*,<sup>d</sup> and *Ex parte Knight*.<sup>e</sup>

Mr. Stanston and Mr. Russell for the assignees of the bankrupt.—The special case found that there was an agreement to renew the note every three months for eighteen months, which was a contrivance to evade the laws against usury, and to take 10*½* per cent. per annum interest on the loan, instead of making one note for the whole period. There was no money advanced on this note—the money had been

<sup>a</sup> By the 7th section it is enacted, "that no bill of exchange or promissory note made payable at or within three months after the date thereof, or not having more than three months to run, shall not by reason of any interest taken thereon or secured thereby, or any agreement to pay or receive or allow interest in discounting, negotiating, or transferring the same, be void, nor shall the liability of any party to any bill of exchange or promissory note be affected by reason of any statute or law in force for the prevention of usury, nor shall any person or persons drawing, accepting, endorsing, or signing any such bill or note, or lending or advancing any money, or taking more than the present rate of legal interest in Great Britain and Ireland respectively, for the loan of money on any such bill or note, be subject to any penalties under any statute or law relating to usury, or any other penalty or forfeiture, any thing in any law or statute relating to usury to the contrary notwithstanding."

<sup>b</sup> 3 Deac. 590.

<sup>c</sup> Now extended by 2 & 3 Vict. c. 37.

<sup>d</sup> 5 Meeson & W. 168. <sup>e</sup> 1 Dea. 466.

lent on a former note. The seventh section of the act was confined to existing bills and notes, and was intended to protect a *bond side* transaction. They cited the case of *Barrington v. Collis*.<sup>f</sup>

The *Lord Chancellor* stopped Mr. *Wigram* in his reply. His Lordship read the material parts of the special case, and taking the facts as therein stated, he did not find any contract between the appellant and the bankrupt for a loan independently of the note; nor was there any contract not to demand the amount of the note when it became payable. There was an undertaking, that was admitted, that the money would not be called for, if the borrower wished the note to be renewed, but no contract to that effect binding on the party, no contract that could be enforced in this Court, or that could be a defence to an action brought on the note when it became payable. The note was given and renewed on that understanding. In holding this transaction to be within the 7th section of the Act, as he certainly did, he did not feel that he was over-ruling any of the cases cited. His Lordship read the 7th section of 3 & 4 W. 4, c. 98, and after pointing out its several provisions, said, that, in every view of it, these notes were within its protection. There was nothing in the section confining the advance of the money to the time of giving the note, and if the doctrine of the Court of Review in its judgment in this case were to be received, no person could gain time for paying a debt due from him by giving a note for it, payable with interest above five per cent. Would the original note, made on the advance of the money, payable in three months, with interest more than the rate of five per cent. per annum, become illegal, because the lender, instead of demanding the money at the expiration of three months, allows it to remain at the same rate of interest? There was nothing in the subsequent dealings of these parties to make the transaction illegal, as it was not originally illegal. That was his lordship's view of this statute, and if this construction was right, it was not necessary for him to say any thing of the cases. Referring to the case of *Holt v. Miers*, his lordship observed that there was a contract in that case, which made it a much stronger case than this, in which there was no contract. As to that part of the special case which stated that the parties resorted to a contrivance to evade the laws against usury, that was true; they did resort to the protection which the statute declared them entitled to against the laws against usury. Concurring fully in the decision in *Holt v. Miers*, he would reverse the decision of the Court of Review in this case, and hold that this was a legal debt. The decision appealed from was reversed. No costs.

*In re Poynter, ex parte Terrewest*, at Westminster, Nov. 4th, 1839.

<sup>f</sup> 5 Bing. N. S. 332.

### Queen's Bench.

[Before the Four Judges.]

COPYHOLD.—MANDAMUS.

The steward of a manor belonging to the Crown is by the 10 Geo. 4, c. 50, the proper person to grant admittance to such manner, and if he refuses to grant it, this Court will issue a mandamus to him to compel him to admit.

Quære, whether a writ of mandamus will lie to the steward of any other than a Crown manor to admit a person claiming a right to be tenant of such manor.

The Attorney General appeared to shew cause against a rule which had been obtained in this case, calling upon the defendant to shew cause why a *mandamus* should not issue commanding him to admit on the roll, as a copyholder, a person who claimed to have a right to be a tenant of the manor. There was a preliminary objection on which this rule must be discharged. The manor of Richmond was a Royal manor, of which the Queen was the lady. In the first place, a rule of this sort could not be directed to the steward, but, according to a decision made last Term, it must be directed to the lord or lady of the manor, whose interests were chiefly to be affected by the proceeding. If that rule was, as it must be, adopted in this case, there could not be any *mandamus*, for none could issue from this Court to the Queen. The party applying for this *mandamus* would not be without a remedy, for if he had suffered any thing from not being admitted on the roll, he might proceed by a petition of right; for it was a rule that wherever there would be, as between subject and subject, a remedy by *mandamus* or action, there must, as between a subject and the Crown, be a petition of right. On these grounds the rule must be discharged.

Sir *W. Follett*, in support of the rule.—All the facts of this case were known to the steward, and had been communicated to the Lords of the Treasury, who ought to have decided without compelling the party to come to this Court. The argument on the other side amounts to this, that in all the manors of the Crown, the tenants are to be without any remedy for any right of which they may be deprived. There is no precedent to be found to compel the tenants of the manors of the Crown to have recourse to a petition of right, either for the inspection of deeds, or for admission on the rolls. But if there is any doubt as to ordinary manors, there is none as to the manors of the Crown. It is clear not only that the steward is bound to admit, and can be compelled to do so, but that he is the only person bound to perform the duty, and that the Crown has no power to grant or refuse admittance. The lord may have an action for the fine payable on admittance, but he cannot refuse the admittance itself if rightfully demanded. Any person in the exercise of the office of steward may admit the person claiming to be tenant, and with respect to this manor the right is completely and distinctly vested in the steward

by the express terms of an act of parliament. That statute is the 10 G. 4, c. 50, by the 8th section of which all the rights of the Crown, in its manors &c. are vested in the Commissioners of the Land Revenues, who are thereby invested with the management of these revenues. The leases therefore must be made under the authority of the commissioners. The 14th sec. provides that the steward shall be appointed by the commissioners with power to hold courts and perform all things belonging or incident to his office. The steward of this manor is now appointed under the statute. The party therefore claiming admittance must apply to the steward, and cannot properly apply to any other person. The interference of the Crown in any way, would therefore be utterly nugatory. There is no direct authority on the point, but the case of *Rosse v. Brenton*,<sup>a</sup> shews that under ordinary circumstances, the steward is the proper person to be applied to, for Lord *Tenterden* there said, "The party is not without his remedy; for he may apply for a *mandamus* against the steward." In the same manner, *Holroyd v. Breere*,<sup>b</sup> also shews that the steward is recognised as a judicial officer, and that trespass will not lie against him for an act done by his bailiff under his order. To compel him to do anything therefore, application must be made to this Court for a *mandamus*. There is no reason whatever to make the Queen a party to this proceeding. In *Watkins on Copyholds*,<sup>c</sup> it is said that the lord cannot have an interest in the matter of the admittance, for that his fines must be paid by any tenant whatever, and that the steward is the only person by whom the admittances are managed. In *Comyn's Digest*,<sup>d</sup> it is said that a *mandamus* lies to an inferior officer, and the steward of a manor is mentioned. *The King v. Fletcher Rigge, Esq.*,<sup>e</sup> *The King v. Rennett*,<sup>f</sup> and *The King v. Medhurst*,<sup>g</sup> were all decided independently of this objection, which has now been raised for the first time. In *Rogers v. Jones*,<sup>h</sup> a *mandamus* was issued, directed to the steward. [Lord *Denman*, C. J.—It seems to have been a common practice to issue these writs to the steward, but it is not shewn that the practice has been held good against the objection.] In *Lord Cokes' Treatise*,<sup>i</sup> the steward is treated as an independent officer whose acts are valid of themselves, and it is said that he doth act indifferently between the lord and the tenant. On the principles of the common law, therefore, the steward is the proper person to whom to direct a *mandamus* for admittance as tenant. But if any possible doubt could exist upon that point, it is clear that by the terms of this statute, he is the proper person in a case where any manor of the Crown is concerned.

*Cur. adv. vult.*

<sup>a</sup> 3 Mann. & Ryl. 296

<sup>b</sup> 2 Barn. & Ald. 473.

<sup>c</sup> Tit. *Mandamus A.*

<sup>d</sup> 2 Barn. & Ald. 550.

<sup>e</sup> 1 Wils. 283.

<sup>f</sup> 12 T. Rep. 197.

<sup>g</sup> 5 Dowl. & Ryl. 484.

<sup>h</sup> Supplement to the Complete Copyholder,

s. 3.

Lord *Denman* delivered judgment.—In this case cause had been shewn on Saturday against a rule for issuing a *mandamus* to the defendant, commanding him to admit a person as tenant on the court rolls of this manor. One objection raised to the application was, that the rule ought not to have been served upon the defendant, but upon the lady of the manor; and then it was further objected, that as the Queen was the lady of the manor here, no writ of *mandamus* could issue. The case depended altogether on the first objection. There are, no doubt, many cases in which the *mandamus* has been directed to the steward only, but it does not appear that in any of those cases the objection was taken. But as to the manors of the Crown, it appears that by the 10 Geo. 4, c. 50, the steward is the statutable officer to act for the Crown in these matters; and as a *mandamus* may issue to him if he is the proper person to be called upon, the Court is of opinion that in this instance he is so, and that the writ ought to go.

Rule absolute.—*The Queen v. The Steward of the Manor of Richmond*, M. T. 1839. Q. B. F. J.

### Queen's Bench Practice Court.

#### RE-ADMISSION OF ATTORNEY.—NOTICE.—TERM.

*The affidavit for re-admission should be lodged the day before the commencement of term at latest, though, under special circumstances, it may be lodged after the commencement of the term.*

*Ogle* applied on the 2d day of term for leave to lodge an affidavit on the part of the applicant at the Master's office now, instead of before the first day of the term. The applicant was an attorney desirous of being re-admitted. He had given his notice of his intention to apply for re-admission, but from the wrong information of the clerk at the Master's office, he had been induced to believe that the copy of his affidavit might be left at that office any time on the 1st day of term. Accordingly on that day, in the afternoon he went to leave his affidavit, and he then ascertained that it ought to have been left on the day before the term at the latest. Under these circumstances the application was made.

*Littledale*, J., allowed the affidavit to be lodged *nunc pro tunc*.

Application granted. *Ex parte Granger*, M. T. 1839. Q. B. P. C.

#### EXAMINATION OF ATTORNEY.—ADMISSION OF ATTORNEY.—NOTICE.

*Unless there is strong reason to believe that a person will not be able to come up to be examined and admitted pursuant to notices given, this Court will not allow the effect of the notices to be extended to another term.*

*Humphrey* applied for leave to extend the notices of a gentleman, who was an articled clerk, from the present to the next term,

**Equity Exchequer.****For Judgment.**—White v. Hillavu.**Peremptories.**—Bowser v. Grebby.**Publication passed.****Attorney General v. Liptrap**Same v. Simpson } Stand over.  
Same v. Isherwood }**Barrow v. Henderson**

Everdell v. Down }

Cutts v. Massy

Greenwich Hospital v. Abbott—stands over generally.

Bridge v. Teed—stands over.

Farquharson v. Theobald—do. generally.

Gibson v. Butler—abated.

Totterdell v. White }

Same v. Davis } abated.

Chigstone v. Simpson—stands over generally.

Doyley v. Prew—stands over for further supplemental bill.

Alsop v. Blair—ditto.

Lord Foley v. Burnand—abated.

Halford v. Halford, re-hearing—not to be in the paper for re-hearing till order.

Payn v. Davis—stands over, with liberty to amend.

Compton v. Payn—ditto.

Jones v. Taber, at defendant's request—to be heard before Baron Alderson, with exceptions.

Wood v. Wood—stands over to amend.

Knight v. Marquis of Waterford—sittings after term.

Haworth v. Bostock—original cause.

Same v. Hume—supplemental suit.

Dunn v. Dunn.

**Publication not passed.**

Blanchard v. Pedder.

Taylor v. Howard.

Templer v. Miller.

Jenaway v. Middleton.

Turner v. Lloyd.

Daniel v. Bishop.

Ferrand v. Stott.

Whittaker v. Whittaker.

Bellamy v. Vincent.

Turnbull v. Walton.

Hatch v. Ball, abated.

Parker v. Alcock, do.

Rowlandson v. Beek.

Spencer v. Spencer.

Macdonald v. Dance.

Att.-Gen. v. Lt. Newborough.

Dawson v. Keith.

Benson v. Smith.

Minerbi v. Brown.

Roe v. Peachey.

Wetherill v. Bellwood } original and revived  
Drisser v. Same } cause.Wetherill v. Weighill } original and revived  
Drisser v. Same } cause.

Same v. Wigglesworth }

Bifield v. Whitehead.

Chambers v. Birchman.

Campbell v. Dickins—original suit.

Same v. Appleford—supplemental suit on bill and answer.

Caldecott v. Williams.

Chambers v. Bircham—supplemental suit.

Corry v. Wilkins—original &amp; supplemental suit.

Harrison v. Preston.

Stott v. Stott.

Cuddon v. Cartwright.

Cox v. Hill.

**Court of Replevin.****The General List of Petitions in Bankruptcy at Westminster, in Michaelmas Term 1839.****Saturday, 2nd Nov.—Motions only.****Adjourned Petitions.**

Wilson v. Carr.

Appuch v. Ashley.

Stocken v. Stocken.

Caldecot v. Heath.

Illidge v. Partridge.

**New Petitions answered for Petition Day, Nov. 2, 1839.**

King v. Manning.

Browne v. Cavenagh.

Stours v. Burghart.

Batchellor v. Geach.

Young v. Gowen.

Tarleton v. Tarleton.

Rogers v. Batten.

Miller v. Miller.

Glossop v. Turner.

Peerman v. Peerman.

Close v. Bridgwood.

Lodge v. Atkinson.

Price v. Price.

Bradbury v. Walden.

Smith v. Parker.

Snape v. Ransford.

Headlam v. Bojie.

Brocklehurst v. Brocklehurst.

Prescott v. Phillips.

Broome v. Marston.

Montague v. Baloom.

Clare v. Glover.

Ravenscroft v. Beesley.

Hayward v. Hayward.

Shaw v. Kirkby.

Solomon v. Solomon.

Nesbitt v. Mould.

Catchpole v. Rickaby.

Machell v. Machell.

**CENTRAL CRIMINAL COURT.****The following days have been appointed for holding the Sessions for the Jurisdiction of the Central Criminal Court for One Year.****1839.**

Monday . 25th November.

Monday . 16th December.

**1840.**

Monday . 6th January.

Monday . 3d February.

Monday . 2d March.

Monday . 6th April.

Monday . 11th May.

Monday . 15th June.

Monday . 6th July.

Monday . 17th August.

Monday . 14th September.

Monday . 19th October.

**JOHN CLARK, Clerk of the said Court.****THE EDITOR'S LETTER BOX.****The Quarterly Digest of all Cases reported since the 1st August is now published. This completes the volume for the year.****"A Constant Reader"** is informed that each course of lectures at the Law Institution is distinct in itself,—taking complete parts of the subjects to which the Lectures relate.

The letter of J. B. W. has been received.

# The Legal Observer.

SATURDAY, NOVEMBER 16, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE RECENT JUDICIAL CHANGES.

### MEMOIR OF MR. JUSTICE VAUGHAN.

THE changes on the Bench which we stated in our last number as then in progress have been now completed; but before we advert to them, we wish to discharge a duty to the memory of the learned Judge whose death has caused the vacancy which has just been filled up. Mr. Justice Vaughan was no ordinary man; he filled a conspicuous place in the profession for many years, and he has died universally regretted. The memorials of his life, which have come to our hands, are but scanty. He was born in the year 1768, and, reckoning from his call to the Bar, was the senior Judge on the Bench. He hardly belongs to the oldest generation of lawyers, some of whom we have recently commemorated. Lord Eldon and Lord Stowell's set must have ranked him only as a junior; and he leaves many eminent seniors still surviving, as Sir Samuel Shepherd, Sir Wm. Alexander, Sir William Garrow, Lord Wynford, Mr. Const, and others. He was educated, we believe, at Westminster School, but did not go to either university, proceeding at once to the study of his profession. He was duly entered at Lincoln's Inn, and was called in Trinity Term 1791, in the same year in which Lord Abinger came to the Bar. He chose the Common Law Bar and the Midland Circuit, where he soon made way, supported as he was, not only by his talents, but by a good connection to give him ample opportunities of displaying them. He speedily became a leader at sessions, and his easy popular manners made him a very general favourite. Early in 1799 he was made a Serjeant, and thus rose into the lead on his own Circuit, and to some business in the Common Pleas in

town. There he had as his competitors no common men,—Sir Samuel Shepherd, Mr. Serjeant Lens, the present Lords Lyndhurst and Wynford, Mr. Serjeant Pell, and others,—nevertheless, in due time, he came into full practice in both these eminent professional stations. We well remember the time when he might be considered the most in repute of the three rows of coifs which were then to be found daily in the Common Pleas. A Tory in politics (although without any party bitterness), and with good friends at Court, it is not to be wondered at that he came in for his share of professional honours. In 1816 these fell thick on him. In Hilary Vacation he was made Solicitor General to Queen Charlotte; in Easter Term King's Serjeant; in Trinity Vacation Attorney General to Queen Charlotte; and he was certainly spoken of as likely to become a law officer of the King; but here he was crossed in his path by another Serjeant of heavier metal,—we mean the present Lord Lyndhurst. He obtained therefore no higher professional distinction at the Bar, but kept his ground as a successful leader in the Common Pleas. We happen to know that in one year, about this time, he made no less a sum than *nine thousand guineas*. It is, however, as all professional men know, allowed to very few indeed to keep a decided lead in any Court for a long series of years; and it is very certain that Serjeant Wilde would make most men look well to their laurels; and this eminent advocate now began to rise to that place in the profession which he has ever since maintained. At any rate, promotion to the Bench, which but few ever decline, did not come undesired, and in Hilary Vacation, 1827, he was appointed a Baron of the Exchequer, on the resignation of Baron Graham. In Easter Term, 1834, he was

transferred into the Court of Common Pleas, changing places with Mr. Justice (now Mr. Baron) Alderson, and at the same time he was made a Privy Councillor. He sat, therefore, more than twelve years on the Bench, and although it cannot be said that he shewed any extraordinary learning while there, yet he always discharged his duty with industry, patience, and ability. His manner at the Bar, which was somewhat boisterous, was much softened on the Bench, and he ever shewed himself a kind and finished gentleman—indeed, no man was more generally liked and valued in private life. He died suddenly, of a complaint of the heart, in September last, at his country seat near Watford, aged 71. He was twice married; first, to the Honorable Augusta St. John, second daughter of the twelfth Baron St. John, by whom he left issue; and secondly, to the Dowager Lady St. John, the widow of the thirteenth Baron St. John, who survives him. He was brother to Sir Henry Halford, who took that name, we believe, at the request of a patient who left him an estate on that condition. It is rather curious that his great rival at the bar, the late Sir Albert Pell, married the Honorable Margaret St. John, a younger daughter of the twelfth Baron St. John.<sup>a</sup>

Having now to the best of our ability, given an impartial account of this able and excellent Judge, we will next proceed to shew how his place has been supplied; and as to this it will be found, that the judicial arrangement which we stated last week, has been carried into effect. The vacant seat in the Common Pleas has been filled up by Mr. Baron, now Mr. Justice Maule, and Sir Robert Monsey Rolfe has been promoted from the Solicitor Generalship to the seat in the Exchequer so vacated. We think Mr. Justice Maule will prove an acquisition in the Court of Common Pleas, which has not been of late a very strong Court, which the Exchequer certainly is. Mr. Baron Rolfe will, we presume, be the Equity Baron, although this business was liked both by the Chief Baron and Mr. Baron Alderson, the latter of whom especially will not surrender it without regret, having recently given it great attention; and having, it is only justice to say, given much satisfaction to the suitors of the Equity Exchequer. Still the new Judge will be found, if we mistake not, an acute and pains-taking man; and we wish him all success. His appointment is of some interest, so far as the proposed reform in

the Court of Chancery is concerned. In the debate in the House of Lords in the last Session of Parliament, it will be remembered that both the Lord Chancellor and Lord Langdale seemed to incline to the opinion that the Equity Exchequer should be abolished, and that two new Judges should be appointed in the Court of Chancery; while Lord Lyndhurst in the House of Lords, and Mr. Freshfield in the House of Commons, thought that the Court should be improved but continued.<sup>a</sup> It may be said that Sir R. Rolfe's appointment will prejudice the free discussion of the question, and perhaps it may; still, if it were thought more beneficial to abolish the Equity Exchequer, he might be appointed to one of the new Courts, the Judge of which will probably be not inferior to a *puisne* baron of the Exchequer. We confess we watch every point connected with the coming reform in Chancery with much expectation, as we think it behoves the present heads of the law to bring forward, without loss of time, a well considered plan for the remedy of the grievous state of the suitors in that Court, to which we shall lose no opportunity of calling public attention. The Solicitor General cannot be formally appointed, we conceive, except by a Cabinet, which meets on the 18th instant.

### CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT. No. XIII.

#### THE ACT FOR THE TRIAL OF ELECTION PETITIONS. 2 & 3 VICT., c. 38.

We have recently laid before our readers the proposed alterations in private committees of the House of Commons. We have now to call their attention to the act of the last session for regulating the trial of Election Petitions. We gave a full account of the mode of trying them under the 9 G. 4, c. 22, at the commencement of our fifteenth volume. That act is suspended by the present act until the end of the second session of the first parliament which may be called after the dissolution of this present parliament (s. 1); and the mode of trying the election petitions now pending, (s. 3), and all future election petitions is prescribed by the present act.

Every election petition is to be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned

<sup>a</sup> See a report of this debate, 18 L. O. 161—169.

\* See Memoir of Sir A. Pell, 4 L. O. 408.

thereat, or alleging himself to have been a candidate at the election; and it is to be presented within such time as shall be from time to time limited by the House (s. 2.) Recognizances are to be entered into by the petitioners for the payment of costs (s. 3), and sureties are to make affidavit of sufficiency (s. 4); but instead of being made before a Master in Chancery as heretofore, the Speaker is to appoint an examiner of recognizances for that purpose (s. 5); and in case of his temporary disability another person is to be appointed (s. 6.) Before this officer or a justice of the peace all recognizances are to be taken (s. 7.) Instead of entering into securities to the full amount, an option is given of paying money into the bank (ss. 8—11.) The sufficiency of the sureties may be objected to (ss. 12—14), and the examiners of recognizances may decide on the objections.

All petitions may be withdrawn after presentation by the petitioner, upon notice in writing, and in such case the petitioner shall be liable to the payment of such costs and expenses as may have been incurred by the sitting member (s. 18.) This section provides for the circumstances which arose in the case of *In re Scott*, 4 M. & Wels. 257.

If the seat becomes vacant, or the sitting member declines to defend his return, notice is to be published, and the consideration of the petition is to be discharged (s. 19.) By the present act, as under the former, voters may become parties to oppose the petition (s. 20), and members having given notice of their intention not to defend shall not be admitted as parties (s. 21.)

We now come to the new mode of appointing Election Committees.

At the beginning of every session the Speaker shall, by warrant, appoint six members who shall be willing to serve, and against whose return no petition shall be then depending, and none of whom shall be a petitioner complaining of any election or return, to be members of a committee which shall be called the General Committee of Elections; and every such warrant shall be laid on the table of the House, and if not disapproved by the House in the course of the three next days on which the House shall meet for the despatch of business, shall take effect as an appointment of such general committee (s. 22).

If the House disapprove the first appointment, a new appointment to be made (s. 23).

The disapproval may be general or special (s. 24).

Members not disapproved by the House may be again named in the warrants (s. 25).

Every member appointed shall continue to be a member of the committee until the end of that session of parliament, or until he shall cease to be a member of the House of Commons, or until he shall resign his appointment, or until the general committee shall report that he is disabled, by continued illness, from attending the committee, or until the committee shall be dissolved as hereinafter provided (s. 26).

Cases of vacancy to be made known to the House, and proceedings suspended. (s. 27.)

And provision is made for supplying vacancies and appointing a new general committee (ss. 28 and 29.)

All election petitions shall be referred by the House to the general committee, for the purpose of choosing select committees; and the general committee shall make out a list of all election petitions in which the examiner of recognizances shall have reported to the Speaker that the sureties are unobjectionable, and in which the proceedings are not suspended, in which list the petitions shall be arranged in the order in which they shall have been so reported upon (s. 30.)

The Speaker is to fix the time and place of first meeting of committee. General committee to be sworn (s. 31.) Four members necessary to enable the committee to act (s. 32.) The committee to regulate their own proceedings (s. 33.) Clerk to keep minutes of proceedings to be laid before the House (s. 34.) During any suspension the Speaker may adjourn any business before the general committee (s. 35.)

At the beginning of every session of parliament the clerk of the House of Commons shall form the names of all the members into an alphabetical list, which shall be called over by the Speaker upon the next meeting of the House after the last day allowed for questioning returns of members to serve in parliament (s. 36.) Every member who shall be more than sixty years old shall be wholly excused from serving on election committees, if he shall desire it, but not otherwise (s. 37.) Every member who shall have leave of absence from the House shall be excused; and if any member in his place shall offer any other excuse, either at the calling over the said list or at any other time, the substance of the allegations shall be taken down by the clerk, in order that the same may be afterwards entered on the journals, and the opinion of the house shall then be taken thereon; and every member who shall have served on one select committee for trying an election petition, and who, within seven days after such committee shall have made its final report to the House, shall notify to the clerk of the general committee his claim to be excused from so serving again, shall be excused during the remainder of the session, unless the House shall at any time resolve, upon the report of the general committee, that the number of members who have not so served is insufficient; but no member shall be deemed to have served on an election committee who, on account of inability or accident, shall have been excused from attending the same throughout (s. 38.) Every member whose return shall not have been brought in for a time exceeding that allowed for questioning the returns of members, or who shall be a petitioner complaining of an undue election or return, or against whose return a petition shall be then depending, shall be disqualified to serve on election committees during the continuance of such ground of disqualification.

tion; and every member of any select committee appointed to try an election petition shall be disqualified to serve again on an election committee during seven days after the final report of the committee on which he so served (s. 39.)

A corrected list, distinguishing the excused or disqualified members, to be printed and distributed with the votes (s. 40.)

The list may be further corrected during one week (s. 41.)

The list shall then be referred to the General Committee of Elections, and the general committee shall thereupon select, in their discretion, six, eight, ten, or twelve members, whom they shall think duly qualified, to serve as chairmen of election committees; and as soon as all the members selected shall have signified to the general committee their willingness so to serve, they shall be formed into a separate panel to be called "The Chairmen's Panel," which shall be reported to the House (s. 42.) After the Chairmen's Panel shall have been so as aforesaid selected the general committee shall divide the members then remaining on such list into five panels, in such manner as to them shall seem most convenient, but so nevertheless that each panel may contain as nearly as may be the same number of members, and shall report to the House the division so made by them; and the clerk shall decide by lot at the table the order of the panels as settled by the general committee, and shall distinguish each of them by a number denoting the order in which they shall have been drawn, and the panels shall then be returned to the General Committee of Elections, and shall be the panels from which all members shall be chosen to serve on election committees (s. 43.) General committee to correct the panels from time to time (s. 44.) Provision is made for supplying vacancies, and increasing the chairmen's panel (s. 45.) Members upon chairmen's panel to make regulations (s. 46.) General committee to give three weeks' notice when any committee will be chosen (s. 47.) Parties to whom notice shall be given (s. 48.) Provision for the case of voters afterwards admitted as parties (s. 49.) List of voters intended to be objected to, shall be delivered to the clerk of the general committee (s. 50.)

The committee is then to be chosen in the following manner:

The general committee shall meet at the time appointed for choosing the committee to try any election petition, and shall choose from the panel then standing next in order of service, exclusive of the Chairmen's Panel, six members not being then excused or disqualified for any of the causes aforesaid, and who shall not be specially disqualified for being appointed on the committee to try such petition for any of the following causes; that is to say, by reason of having voted at the election, or by reason of being the party on whose behalf the seat is claimed, or related to the sitting member or party on whose behalf the seat is claimed by kindred or affinity in the first or second degree according to the canon law; and each panel

shall serve for a week, beginning with the panel first drawn, and continuing by rotation in the order in which they were drawn, and not reckoning those weeks in which no select committee shall be appointed to be chosen (s. 51.)

In case of disagreement the general committee is to adjourn; committees are to be chosen for petitions according to their order on the list (s. 52.) When committee is chosen the parties to be called in (s. 53.) General committee is to proceed in order with all the petitions appointed for that day (s. 54.) Parties may object to disqualified members; and if general committee allow the disqualification, a new committee to be chosen (s. 55.) Notice is then to be sent to every member chosen (s. 56.) If any member chosen proves disqualification, another committee to be chosen (s. 57.) Members on Chairmen's Panel to appoint chairman to select committees (s. 58.) Select committee is then to be reported to the House (s. 59.) The seven members of select committee are to be sworn (s. 60.) The members of said committee not present within one hour after the meeting of the House are to be taken into custody by the serjeant at arms, unless it shall appear to the House by facts specially stated, and verified upon oath, that such member was by a sudden accident or by necessity prevented from attending the House (s. 61.) If any such member is not present within three hours after the meeting of the House, the proceedings to be adjourned (s. 62.) All the members not attending after adjournment, the committee to be discharged (s. 63.) Petitions and lists to be referred to the committee, and time and place of meeting to be appointed by the House (s. 64.)

Committees are not to adjourn for more than twenty four hours, without leave, &c. (s. 66.) Committeeman not to absent himself. Committee not to sit until all be met. On failure of meeting within one hour, adjournment to be made (s. 67.) Absentees to be directed to attend the House (s. 68.) If any committee is reduced to less than six by the non-attendance of its members, it shall be dissolved, except as herein aforesaid (s. 69.) Committees to be attended by a short hand writer (s. 70.) Committee empowered to send for and examine persons, papers, and records. Witnesses misbehaving may be reported to the house and committed to the custody of the Serjeant at Arms (s. 71.) Giving false evidence to be perjury (s. 72.) Evidence to be confined to objections particularized in the lists (s. 73.) Committee to decide and to report their decision to the house (s. 74.) Committees may report their determination on other matters to the house (s. 75.) When committee is deliberating the room to be cleared, &c. (s. 76.) Questions to be decided by a majority, (s. 77.) Names of members voting for or against any resolution to be reported to the House (s. 78.) Committees not dissolved by the prorogation of parliament, &c. (s. 79.) Costs, when incurred by petitioners, &c.

Full provision is made for giving costs where

either the petition (s. 80), or the opposition to it, is in the opinion of the committee frivolous or vexatious, (s. 81), but provision is also made for awarding costs when incurred where no party appears to oppose a petition (s. 82); and for costs upon frivolous objections (s. 83); and costs upon unfounded allegations (s. 84.)

The costs and expences of prosecuting or opposing, or preparing to oppose, any petition presented under the provisions of this act, and the costs and expences which shall be due and payable to any witness summoned to attend before the examiner of recognizances, or before any committee under the provisions of this act, shall be ascertained in manner following; (that is to say,) on application made to the Speaker of the House of Commons by any such petitioner, party, witness, or officer, for ascertaining such costs and expences, within three calendar months after the determination of the merits of such petition, or after any order of the House for discharging the order of reference of such petition to the General Committee of Elections, or after the withdrawal of any petition, as hereinbefore provided, the Speaker shall direct the same to be taxed by the examiner of recognizances; and the said examiner shall examine and tax such costs and expences, and shall report the amount thereof together with the name of the party or parties liable to pay the same, and the name or names of the party or parties entitled to receive the same, to the Speaker, who shall, upon application made to him, deliver to the party or parties a certificate, signed by himself, expressing the amount of the costs and expences allowed in such report, with the name of the party liable to pay the same; and such certificate, so signed by the Speaker, shall be conclusive evidence as well of the amount of such demands as of the title of the several parties to recover the same in all cases and for all purposes whatsoever; and the witness or party claiming under the same shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same (s. 85.)

Costs occasioned by delay in appointing the select committee to be taxed off (s. 86.) Persons appointed to tax costs empowered to take affidavits (s. 87.) Costs how to be recovered by an action of debt (s. 88.) Persons paying costs may recover a proportion thereof from other persons liable thereto (s. 89.) Recognizances when to be estreated, &c. (s. 90.) The returning officer may be sued for neglecting to return any person duly elected (s. 91.)

This is the new mode proposed, and we shall be curious to see whether it gives more satisfaction than the one that it supersedes.

## THE PROPERTY LAWYER.

### RIGHTS OF COPYHOLDERS.

WHERE large masses of stone had fallen from time to time from some cliffs above upon the field of a copyhold, and had become

thereby partially imbedded in the soil: there being no evidence to show when any particular portion of them had fallen, it was held that they were the property of the lord, and that the copyholder could not remove them for his own profit. Lord Abinger said, "If it were necessary to decide whether a copyholder might remove stones, loose and recently brought upon the land—or even larger stones which were incumbering the land,—for the advantage of the copyhold estate, I probably should not be disposed to negative the proposition that he has such right. Probably even a tenant for years might do this, because he could not otherwise profitably enjoy the farm. But this is quite a different case, the question being, whether large stones, imbedded in the soil, and which perhaps may have been there since the deluge, may be removed by the copyholder. Now, I think the evidence shows that the lord has exercised a right to remove these stones for his own profit, and although it was to the detriment of the copyholder. The case seems to me to be just the same as if a copyholder were to claim a right to remove a portion of the land itself; these are stones imbedded in the soil, and form part of it, and part of the value of the land. *Dearden v. Evans*, 5 Mee. & W. 11.

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## THE LAYS OF THE LAST SERJEANTS.

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### THE LAST SERJEANT'S LAST SPEECH.

MY LORDS,—I now address you for the last time. I am the last of my ill-fated race. Our lamented brother, M——, died yesterday; he was the last but one. I am the last of the Serjeants, *ultimus Romanorum!* I will not survive the dynasty of my family; at any rate I will not live in a country where Serjeants have ceased to be appreciated. I will seek out a land where worth has still some claims to respect—where the coif still carries with it some venerable associations. My Lords, I die in peace with all my enemies. I wish to blame no one in this matter. I only say that some one has a great deal to answer for. I am not prepared to hold that the illustrious order of serjeants are the only remaining pillars of the state. I am, I trust, a reasonable man; but I do say that I cannot calculate upon the degree of hazard which the country will run when they shall cease to exist. The monarchy may survive it. My Lords, I emphatically repeat the "may;" but will the Common Pleas?

Where will that Court be without Serjeants? What will it be? My Lords, it will be a wilderness: it will cease to be a Court. Deprived of its ornaments and protectors, it will languish and die. And if the Common Pleas go, how long will the others remain? How long will you have an Exchequer? How long a Queen's Bench? How long, my Lords, will you have a Queen? If Westminster Hall falls into ruins, how long will Westminster Abbey stand? I say, then, that this is the beginning of the end. By destroying the Serjeants you are giving the first blow to the most sacred institutions of the country. You may remove this black patch from my wig, but you little think what you are doing. In these mysterious patches lies much hidden meaning. They are inseparably bound up with the best interests of the country. Then again these tails:—My Lords, they are made of no ordinary horse-hair; they are entwined round the bowels of our country. Our country did I say. Your country, my Lords, I should have said. I disown it. Cut off these tails then at your peril! I have now done, my Lords. Alas! for my race—my tears fall fast when I think of them. You know how they have dropped off, one by one, or two by two. They all died, my Lords, of broken hearts; their ghosts will haunt this Court many a long night. If ever a spirit returned from the dead, I will come back. Here, by the pale moonlight, we will hold our Court. Here we will "count," and here we will again levy fines, and suffer recoveries as of yore. Who shall tell our history? who shall tell who died first, and who last? You know, my Lords, poor brother B—— went first. Who went next? A—— and S——; they lie buried in each others arms. They have gone to mingle with the long line of illustrious shades, formerly Serjeants. I shall soon join them—"Othello's occupation's gone!"

#### THE LAW OF JOINT INTERESTS.\*

MUCH interest and edification are to be derived from the contemplation of the various connections and distinctions which exist between the different joint-ownerships recognised by our law. They all bear some similarity to each other, but there is not one, of course, that has not peculiar features,—distinctions mainly tending to illustrate not

merely its own peculiarities, but the nature of joint-ownerships in general,—which I will enumerate thus: Coparceners, tenants in common, part-owners, and partners. Joint-tenants, trustees, assignees in bankruptcy, executors, administrators, guardians, &c. The five first are what are strictly called joint-ownerships; but as it is almost always usual to make a joint-tenancy in the creation of trusts, or in the latter above-mentioned cases, I think they are an ordinary instance of joint property in *autre droit*.

A tenancy by entireties is of all joint-ownerships the most undividable: it partakes in law of a quality that may be said to be nearly allied to an ownership in severalty, though it is constituted by two persons. *Vix et uxor sunt quasi unica persona.* The consequence is, that if an estate be made to husband and wife and a third person, the former take only one moiety, as if there were but one person. (2 Sir W. Black. 1213; 8 Ves. 145; 1 Vern. 233; 2 Vern. 120; Litt. s. 291.)

The curious characteristics of this tenancy, as compared with the other joint-ownerships, form most interesting considerations, and materially tend to give an insight and introduction to the nicest points of law. Nor ought we, in an attempt at the elucidation of the various doctrines conveyed by the right understanding of joint-ownerships, to omit having recourse to points arising from the law of several or divided ownerships.

A several or separate ownership, as we have seen, is not to be considered as forming an ingredient of a joint-ownership, though, to some purposes, joint-owners, in many cases, are seised *per my et per tout*, for no property can be held jointly and severally. An interest, though verbally granted to two, may in law be the property of one only. This may arise where one person is capable of taking and the other not; and it introduces to our notice the law that arises when an interest real or personal is granted to or devolves on the sovereign and the subject, &c. (*Slingsby's case*, 5 Rep. 19; 2 Comm. 409; Gow, 338; Co. Litt. 185 a; Plowd. 262; Jo. 387.)

Where mere naked authorities are reposed in two or more, distinctions arise which form a subject of discussion totally different from the consideration of interests when so granted. The question in these cases, as it appears to present itself, is, whether a less number than those originally appointed can execute the authority confided, which includes the proposition whether, when given to two or more, and one or more die, the survivor or survivors can execute it. Various and important points then arise as to what extent a private discretionary authority can be considered as coupled with some other subject-matter, or as not merely personal, so that it may be acted on by the survivor or otherwise, or how far and when an authority is to be considered a public duty and survives *pro bono publico*, and this leads to very important points with regard to the exercise of public offices. (2 Ves. sen.

\* See the previous articles on this subject, 18 L. O. pp. 361, 377, 455.

179; Co. Litt. 181<sup>b</sup>; Amb. 98; 2 Eq. Ca. Ab. 648, &c.)

But, with respect to private authorities, it is of the utmost importance to ascertain, especially in cases of executors, trustees, guardians, &c. whether their authority is a simple naked one, and then whether it is confidential and personal, and to whom it is confided, for the greatest strictness is to be observed in these cases, and it is not clear that a Court of Equity would in such cases always interfere to prevent non-execution of the power. Some powers are of such a nature as to have a conditional character, and are absolutely void on the death of one or more of the parties intrusted with them. (Amb. 309; Suppl. to Ves. sen. 456; 10 Price, 230; *Cole v. Whade*, 16 Ves. 27; 1 B. & Ald. 608; *Down v. Worrall*, 1 M. & K. 561; *Peyton v. Bury*, 2 P. Wms. 627; *Butler v. Lord Bray*, Dy. 190.)

It appears very doubtful whether under 3 & 4 W. 4, c. 74, in case the settlor appoints protectors independently of estate, the right would survive, unless it be expressly so provided. (3 & 4 W. 4, c. 74.)

But to return to joint-ownerships:—The student should be prepared to understand readily whether in deeds, wills, or other instruments, an interest is given to parties as joint-tenants or tenants in common. This, indeed, may be said to be a common learning, but, from the inadvertence of testators and bad will-makers, a great deal of difficulty, and, I may almost say, abstruse learning has been given rise to, by the adopting unintelligible expressions, together with the simple one, which, in a will, is sufficient to create a tenancy in common. I allude to the unmeaning phrases of survivorship, which, in the discussion of them, compel us to refer to and be prepared with the doctrine of lapse, and the vesting of interests under wills, and to what period the words of survivorship refer. These points have been the cause of a most numerous variety of cases, and for ought that appears may produce as many more. (*Fisher v. Whig*, 1 Salk. 205, &c.; Co. Litt. 26<sup>b</sup>; *Simm's case*, 13 Rep. 24; *Stringer v. Phillips*, 1 Eq. Ca. Ab. 292; *Bindon v. Earl of Suffolk*, 1 P. Wms. 96; *Barnes v. Allen*, 1 Bro. C. C. 180; *Knight v. Gould*, 2 M. & K. 295; *Doe d. Long v. Prigg*, 8 B. & C. 231; 2 M. & N. 338; *Harrison v. Foreman*, 5 Ves. 207; 4 Russ. 398, &c.)

In this sort of discussion the learning of disclaimer by one of two joint-grantees, &c. is necessarily involved, which it is necessary that the student should be prepared with, as it is most usually applied to executors and trustees, who may incur the greatest expense and inconvenience from a careless inattention to the requisitions necessary to the relinquishment of their office. (4 Cru. Dig. 435; Fonbl. Eq. 2 ed. 307; 2 Keb. 484, pl. 24, &c.; *Hensloe's case*, 9 Rep. 36; 1 Salk. 2; 3 B. & Ald. 31; 9 B. & C. 115, 300.)

We may also refer to points that have arisen under powers of appointment, which may create a tenancy in common in default, from the wording of the power or otherwise. They also induce some important considerations in

those cases where some of the objects of the power become incapable of taking at the period of the exercise of it. (2 M. & W. 56; 3 R. & M. 78; 6 Sim. 257; 2 Bro. C. C. 242; 1 Ves. jun. 310; Sugd. Powers, 6 ed. 531; 10 Jarm. Byth. 208.)

It might at first sight appear that in the treating of the subject of joint-ownership the discussion of *Shelley's* and *Wilde's case* would be entirely out of place, but it requires no great stretch of the reasoning faculties to discover, and experience has shewn, that limitations in wills to "heirs," "issue," &c. by which the testator, perhaps, meant to indicate a succession, have been construed to mean ascertained persons who may either take as joint-tenants or tenants in common. (1 Rep. 92; 6 *Ibib*, 17; 1 L. R. 310; 3 Vern. 544; *Swain v. Burton*, 15 Ves. 365; *Doe d. Hallen v. Ironmonger*, 3 East, 535, &c.)

Limitations upon a joint-tenancy and tenancy in common have formed no small matter of debate. There may be a limitation to two and an extended interest to one of them; and the doctrine of merger is nowhere more nicely to be applied than in cases where a further extent of estate devolves upon one joint-tenant, tenant in common, or coparcener to merger, or a several owner obtains in certain cases a share of his estate for a further duration. (*Wiscott's case*, 1 Rep. 61; 3 Prest. Conv. 3 ed. 59; F. C. R. 9 ed. 36; Butl. Co. Litt. 290<sup>b</sup>; *Church v. Edwards*, 3 Bro. C. C. 180; 3 Prest. Conv. 92; 8 Jarm. Byth. 148.)

What we have hitherto referred to merely applies to the constitution and character of joint-ownerships. To ascertain the distinctions of the relative rights of the respective joint-owner is a matter of the utmost importance, and tends to enlighten the student in a manner the most convincing, and conducive to the right understanding of all the joint-ownerships; for, in the discussion, it is absolutely necessary to trace them all to their original foundation, whence he may derive the knowledge and reasons of their similarities and dissimilarities. There is one rule which he should keep in mind, viz. that so far as the possessory or usufructuary enjoyment is concerned, tenants in common, coparceners, and joint-tenants are on the same footing; that trustees at law are but joint-tenants; that an executor has an office recognized by the law, and one executor can pass the whole independently of his co-executors, which a trustee as joint-tenant cannot do. This distinction has given rise to much argument in many cases respecting the liability of executors and trustees:—a point of no small importance. Assignees in bankruptcy are but as trustees or joint-tenants; but they have some peculiar powers, of course, from the nature of their situation. (Co. Litt. 188<sup>b</sup>, 193<sup>b</sup>; 3 Salk. 206; 3 B. & P. 409; 11 East, 288; Cro. Eliz. 478; 2 V. & B. 51; *Can v. Reed*, 3 Atk. 695; Archb. B. L. 325.)

There may be a joint covenantor or obligee of a debt, and it being a chose in action, he has a power to release the whole. (Co. Litt. 229; 7 Mod. 250; Cro. Jac. 16.)

Having placed some of the joint-ownerships on their first principles, the object then is to shew how far the *particular* relative rights of each joint-owner extends; as the power of selling, letting, surrendering, charging and discharging, giving notice to quit, distraining, repairing; but previously to this, to discover how far the mere usufruct of the property is to be regulated among the joint-owners rightfully, without endangering an ouster or dis-possession.

After this we may enter upon the powers of partners *inter se*, who have most extensive powers, and then treat of the powers of part-owners; and in these instances we observe the force and direction of commercial transactions, and the remedies of a part-owner in a ship in the Admiralty Courts,—shewing at the same time how far in other respects they have respectively rights over their joint property *inter se*.

In this way of proceeding we may imbibe a right idea of the bearings of the respective joint-ownerships, and embrace at one view, as it were, the whole fabric, by comparative reasoning.

There is one sort of property that I think ought to be treated by itself, when vested in two or more, and that is church property, advowsons, and presentations thereto: the enjoyment thereof being of no common character.

We have before observed that there may be joint-owners by tortious acts: but it is also to be observed, that by the release, &c., of the rightful owner, the wrongful or defeasible title may be rendered a rightful or indefeasible one.

In the cases of joint disseisors the release of the rightful owner to one or some of them, may operate either to put the others out or vest a rightful title in both, and this depends on the nature of the release, or in whose hands the estate is; but in case of personal rights, a release to one of the wrong-doers in respect of it cancels the whole obligation: *Verba fortius accipiuntur contra proferentem.* 1 Atk. 294; 14 Vin. Ab. Release, (G. a.) 4, 6, 10.)

There have been several cases as to the effect of a deed discharging one of two joint-debtors. Whether it be a release or a covenant not to sue, and whether by the recital of the deed the intention of the parties indicates what operation the deed shall have. (2 B. & B. 38; 3 B. & Ad. 175; 8 T. R. 168; 1 Marsh. 603.)

The student, however, should be prepared to know what amounts to a release. There are releases in law and releases in fact, and of the former several that should be brought to his attention and distinguished. Where the law by itself merely operates to discharge a joint-debtor, it will not discharge his companion. *Constructio legis nemini facit injuriam.* (4 Bac. Ab. Guill. ed. 369; 1 B. Moore, 172; 1 B. & C. 248; 1 Mer. 567; 4 Taunt. 326.)

Lastly, we may advert to the *jus accrescendi*, as to its paramount effect, and the incapacity of a joint-tenant to make a will, unless it is a direction of a use under the Statute of Uses, &c., and it is to be observed that, notwithstanding the recent Statute of Wills, this point is left as it was before that act. (1 Vict. c. 26, s. 4.)

That interesting topic also occurs which engaged the pen of Mr. Fearne, whether any and what presumptions are to be made in those cases where survivorship is necessary to be proved to give a party a title, and which, from want of evidence, it is scarcely possible to come to any conclusion on.

The easy transition of the property to the survivor of two joint-tenants entire, without going over in parcels, affords us a notion of the intention of cross-remainders. In *Marryat v. Townley*, it was observed by the Court, that one great reason for creating cross-remainders is the impossibility of the different persons taking as joint-tenants. (1 Ves. sen. 102.)

By the inadvertance of framers of deeds and wills an estate has been frequently limited to two or more, with an express limitation to the survivor, causing the limitation to be considered contingent, and much debate has arisen by eminent conveyancers as to how far this contingent remainder may be destroyed or passed. At this day, however, this point is on a more sure footing.<sup>a</sup>

<sup>a</sup> Mr. Preston has observed that “the doctrine of joint-tenancy, tenancy in common, and coparcenary, though apparently simple in itself, induces many consequences which ought to be thoroughly understood. These subjects are connected with various rules of law, with which it is the interest of the student to be intimately acquainted.” A work of the character above described, intitled “A Comprehensive View of the Law of Joint-Ownerships,” is, we understand, in preparation and will shortly be published.

## ATTORNEYS APPLYING TO BE ADMITTED IN HILARY TERM, 1840.

[Concluded from page 26.]

### Clerk's Name and Residence.

Dyson, James Armstrong Francis, 42, Lower Seymour Street; and Thrapston.  
•Davies, William Brissett, 63, Connaught Terrace, Hyde Park,  
Davis, Isaac, 10, Norfolk Street, Strand.

### To whom articled, assigned, &c.

John Archibould, Thrapston.

Sir George Stephen, 17, King's Arms Yard.

James Phineas Davis, 14, Charlotte Street, Bedford Square.

\* The names marked thus are in the Common Pleas: the rest in the Queen's Bench.

*Clerk's Name and Residence.*

Davenport, William, 16, Ely Place.  
Duberley, George, Dursley.  
Driffield, Walter Wren, Prescot.  
Davis, Thomas Hammond, 3, Upper Kennington Green.  
Dowling, John Frederick, 32, Tonbridge St., St. Pancras; Duke Street; and Winchester.  
Dene, George Barbor, 20, East Street, Red Lion Square; and Upper Eaton Street.  
  
Donald, John Reed, 16, Norfolk Street, Strand, and Liverpool.  
Edleston, Richard Chambers, Nantwich; and Newport.  
Evans, Charles, 2, Pinner's Court, Old Broad Street; Hereford; and Parliament Street.  
Ellison, Richard, 25, Frederick Place, Hampstead Road; Sheffield; Chichester Place; Stone.  
Everingham, Henry, the younger, 36, Judd Street, Wareham; and New Milman Street.  
•Fisher, Charles, Barnstaple, Devon; and Southampton Row  
  
Frodsham, Frederick, Liverpool.  
Fall, John, Chesterfield; and Newcastle-upon-Tyne.  
  
Fairbank, David, Darlington.  
Gibson, Charles Mair, Nottingham.  
Green, Charles, Runcorn.  
  
Gosset, Montague, the younger, George St., Mansion House.  
Gill, James, Liverpool.  
Goodlad, Godfrey, Brighton.  
Goode, Philip Benjamin, 43, Howland Street; and Cork Street.  
Godden, John, 6, St. George's Terrace, Hyde Park North.  
Gell, Alfred, Lewes.  
Gibbs, Thomas Washbourne, 4, Manchester Street, Gray's Inn Road; and Bath.  
Harrison, George Frederick, 98, Upper Stamford Street; and Leeds.  
Hellawell, John Beaumont, Huddersfield.  
Hanbury, Thomas James, Tonbridge Place, New Road; John Street; and Lamb's Conduit Street.  
Hawksford, John, Wolverhampton.  
Hume, John Penry, 29, Alsop Terrace, New Road; and 30, Regent's Square.  
  
Holtby, John, York.  
Humble, George, the younger, Cleckheaton.  
Hucknall, Alfred, Loughborough.  
  
Harrison, George, Bishop Wearmouth.  
  
Hardisty, Edward Brydges, Hampstead.  
  
Hull, Frederick Shepard, 32, Throgmorton Street; and Liverpool.

*To whom articled, assigned, &c.*

Robert Southee, Ely Place.  
William Duberley, Dursley.  
William Rowson, Prescot.  
Henry Harpur, Kennington Cross.  
  
Henry Earle, Andover; assigned to Daniel Cullington, Craven Street.  
William Lamb Hockin, Dartmouth; assigned to Edward Dunsterville Puddicombe, Lincoln's Inn Fields.  
George Frederic Fairclough, Liverpool.  
  
John Stanley, Newport; assigned to Richard Edleston, Nantwich.  
Thomas Evans, Hereford; assigned to John Burder, Parliament Street.  
Joseph Haywood, Sheffield.  
  
Thos. Bartlett, and Chas. Bartlett, Wareham, assigned to Barry Parr Squance, Coleman Street.  
Joseph Fisher, Bury Street, St. James's, deceased; assigned to Thomas Hooper Law, Barnstaple; assigned to Samuel Fisher, Bucklersbury.  
Robert Frodsham, Liverpool.  
Bernard Maynard Lucas, Chesterfield; assigned to Henry Ingledew, Newcastle-upon-Tyne.  
George Allison, Richmond and Darlington.  
William Nicholson Hodgson, Carlisle.  
Charles Aikin Holland, Northwich and Runcorn.  
Richard Roy, Lothbury.  
  
Robert Frodsham, Liverpool.  
William Sargent, Sheffield.  
Philip Goode, Howland Street; assigned to John Pike, Golden Square.  
Robert Bicknell, Bloomsbury Square; assigned to George Waugh, Great James Street.  
Francis Harding Gell, Lewes.  
Frederick Dowding, Bath.  
  
John Atkinson, Leeds.  
  
William Barker, Huddersfield.  
Thomas Sewell, Newport; assigned to Robert Carr Foster, Gray's Inn.  
  
William Manby, Wolverhampton.  
Robert Montague Hume, Great Winchester Street; assigned to Edmund Maunde, Great Winchester St.; assigned to W. Willoughby Gunston, Great Winchester Street.  
William Jackman, York.  
George Teale Lister, Cleckheaton.  
William Blunt Fosbrooke, Loughborough; assigned to Joseph Parker, Loughborough.  
George Harrison the Elder, Bishopwearmouth; assigned to Joseph John Wright, Sunderland.  
John Swaine Sculthorpe, Great Marlborough Street.  
William Thompson, Liverpool; assigned to John Burch Lloyd, Liverpool; assigned to William Henry Cotterill, Throgmorton St.

*Clerk's Name and Residence.*

Harbin, Peter Tait, 16, Bridge St., Vauxhall.  
 Hope, Thomas, 1, Heathcote Street; and Wells.  
 Hargreaves, John George, 11, Caroline Street, Westgate Hill, near Leeds.  
 Harfield, Robert, Arundel.  
 Hunter, John, 12, Coborn Terrace, Bow; and Limehouse.  
 Hostage, John, Chester.  
 Hoare, Clotworthy Owen, 3, Lincoln's Inn Fields.  
 Johnson, James, 5, Belgrave Street, South; Pimlico; Higher Broughton; and Aldersgate Street.  
 Jarvis, Lewis Whincop, 6, Wells Street, Gray's Inn Lane; and King's Lynn.  
 Iggleston, John, the younger, Deal.  
 Jones, John Wm. 8, Barnsbury Place, Islington.  
 King, Paul John, 4, Euston Grove; and Rutland Street.  
 Kingdon, Richard, Holsworthy; and 15, Cummington Street.  
 Law, John, the younger, Greenheys, Lancashire.  
  
 Lietch, Thomas Carr, North Shields.  
 Lighton, Andrew, Starcross.  
 Lowe, William, the younger, 18, Portugal Street, Birmingham; and Manchester.  
 Leech, Joseph, 6, Frederick's Place, Old Jewry.  
 Leonard, Robert, London; Tewkesbury.  
  
 Marsh, John Fitchett, 40, Sidmouth Street: Warrington.  
 \*Merrick, William, Bradford, Wilts.  
 Mullens, Richard, 68, Myddelton Street, Clerk-enwell.  
 Monkman, Henry William, York.  
 Moss, William Henry, Kingston-upon-Hull.  
  
 Mould, Ralph Allen, 27, Lloyd Square, Pentonville.  
 Mercer, George, Wells Street, Gray's Inn Road; and Ramsgate.  
 Newington, William John, 1, New Court, Middle Temple; and Goudhurst.  
 Perkington, Joshua Furness, 1, Manchester Street, Gray's Inn Road; and Halifax.  
 Palmer, William Henry, 51, Manchester Street, Manchester Square; Haverfordwest; Henrietta Street.  
 Pitt, James, 27, Tavistock Place, Tavistock Square; Stratton.  
 Pennington, William George, Clapham.  
 Pilleau, William, 12, Upper Kennington Place.  
 Plues, Samuel Swire, Richmond, Yorkshire.  
  
 Phené, Phineas, 25, Featherstone Buildings; and Melksham.  
 Pierson, James Henry George, 13, Little Queen Street; Tiverton.  
 Paget, William, Skipton.  
 Pybus, George Harrison, 5, New Boswell Court.

*To whom articled, assigned, &c.*

William Waller, Clement's Inn.  
 Benjamin Hope, Wells; assigned to James Beavan Meredith, Heathcote Street.  
 John Bramwell, Durham.  
  
 William Duke, Arundel.  
 John Anderson Pybus, Newcastle-upon-Tyne.  
  
 John Finchett Maddock, Chester.  
 John Orde Hall, Brunswick Row.  
  
 John Makinson, Manchester.  
  
 Lewis Weston Jarvis, King's Lynn.  
  
 John Mercer, Deal.  
 Benjamin Workman, Evesham.  
 Edward Robert Porter, New Court; assigned to Thomas Wright Nelson, New Court.  
 Charles Kingdon, Holsworthy.  
  
 David Law, Manchester; assigned to Joshua Southward, Manchester; assigned to Marmaduke Foster, Manchester; assigned to Francis Dickin, Manchester.  
 John Lowrey, North Shields.  
 John Gidley, Exeter.  
 Samuel Danks, Birmingham.  
  
 William Stevens, Frederick's Place, Old Jewry.  
 Lindsey Winterbottom, Tewkesbury; assigned to Edw. Blackmore, 1, Mitre Court, Temple.  
 Joseph Wagstaff, Warrington.  
  
 William Timbrell, Bradford.  
 William Belton Crealock, 4, Regent Street.  
  
 Thomas Walker, York.  
 William Henry Rosser, Gray's Inn Place; assigned to Charles Frost, Kingston-upon-Hull.  
 John Bridges, Red Lion Square.  
  
 John Mercer, the younger, Ramsgate.  
 Giles Miller, Goudhurst.  
  
 James Stansfeld, Halifax.  
  
 William Evans, Haverfordwest.  
  
 Thomas Lediard, Cirencester.  
  
 Lawrence Desborough, Size Lane.  
 Beriah Drew, 185, Bermondsey Street; assigned to Geo. Drew, 185, Bermondsey St.  
 Ottiwell Tomlin the elder, Richmond, Yorkshire.  
 Henry Goddard Awdry, Melksham.  
  
 Clement Govett, Tiverton; assigned to Robert Loosemore, Tiverton.  
 Thomas Brown, Skipton.  
 William Pybus, Middleton Tyas; assigned to Thomas Henry Dixon, 5, New Boswell Court.

<i>Clerk's Name and Residence.</i>	<i>To whom articled, assigned, &amp;c.</i>
Pitman, Harry Harris, 6, Essex Street, Strand.	John Geare, the elder, Exeter; assigned to Wightwick Roberts, Lincoln's Inn Fields.
Rayer, Edward, Cheltenham.	Joseph Cooper Stratford, Cheltenham.
Roberts, Frederick Rowland, 4, Warwick Court, Holborn; and 14, St. Thomas Street East, Borough.	Horatio Hughes, Aberystwith.
Robinson, Thomas, 58, Pratt Street, Camden Town, and Huddersfield.	William Barker, Huddersfield.
Rea, John, 44, Southampton Buildings; Alnwick; and Middleton Street.	William Dickson, Alnwick.
Robinson, Thomas, 20, Baker Street, Lloyd Square; Cockerton; and Norfolk Street, Strand.	William Rymer, Darlington.
Sealy, Henry, 34, Percy Street, Bedford Square; and 36, Great Coram Street.	John Teesdale, 31, Fenchurch Street.
Sparks, John, 30, Kenton Street, Brunswick Square; and Crewkerne.	Isaac Sparks, Crewkerne.
Salmon, William, 5, Norfolk Street, Strand; and Bury St. Edmund's.	Sturley Nunn, Ixworth; assigned to Harry Wayman, Bury St. Edmunds.
Smith, John Oliver, Dorset Place North, Clapham Road.	Timothy Surr, 80, Lombard Street.
Sanders, John Thomas, 69, Strand; 9, Fountain Court, Strand.	George Saffery, Market Rasen.
Stone, John, 38, Milk Street; Bath; and Pancras Lane, Cheapside.	Henry John Mant, Bath.
Slade, James Frederick, 8, Argyle Street, Regent Street.	Philip Goode, 44, Howland Street, Fitzroy Square; assigned to Charles Dod, Craven Street, Strand.
Scott, William Henry, Chelmsford.	Robert Bartlett, Chelmsford.
Sparke, James Bird, 13, Warwick Court, Holborn.	Godfrey Goddard, Wood Street, Cheapside; assigned to Frederick Harrison, 34, Bloomsbury Square.
Taddy, Charles, Clifton.	George Cooke, Bristol.
Tomlin Ottiwell, the younger, 30, Mornington Place; and Richmond, Yorkshire.	Ottiwell Tomlin, the elder, Richmond, Yorkshire; assigned to James Williamson, 4, Verulam Buildings.
Teale, William, 98, Upper Stamford Street; and Leeds.	Robert Barr, Leeds.
Thompson, John, 19, Compton Street, Brunswick Square; Shrewsbury; and Castle Street, Holborn.	Walter Burley, Shrewsbury; assigned to Jonathan Scarth, Shrewsbury.
Towse, Robert Beckwith, Fishmongers' Hall, London Bridge.	John Beckwith Towse, Fishmongers' Hall.
Tillett, Jacob Henry, Norwich.	John Rising Staff, Norwich.
Twining, Daniel, the younger, 43, Southampton Buildings; and Bedford.	Theed Pearse, the younger, Bedford.
Thomas, George, the younger, 15, Ely Place, Holborn.	George Thomas, the elder, Carmarthen; assigned to Samuel Walker, 29, Lincoln's Inn Fields.
Twynam, William Edwin, Wells.	George Twynam, Winchester; assigned to Benjamin Hope, Wells.
Walmisley, Edward, Counter Hill; New Cross; Kent.	Archibald Keightley, 43, Chancery Lane.
Wightwick, Thomas Norman, 28, Southampton Buildings.	Julius Gaborian Shepherd, Faversham.
Woodrow, Jeremiah, 164, Fleet Street; Ryde; Huntley Street; and William Street.	William Butt, Ryde.
Whitehouse, Joseph, 1, Francis Street, Gower Street, Bedford Square.	Peter Williams, Holywell.
White, Samuel George, 5, Warren Street, Pentonville.	Cecil Proctor Wortham, Buntingford.
Wight, Thomas, 11, St. James's Place, Hampstead Road; Dudley; and Kingswinford.	William Robinson, Dudley.
Weddell, James Call, 115, Bunhill Row.	Robert Weddell, Berwick-upon-Tweed; assigned to William Pringle, King's Road, Bedford Row.
Waugh, Edward, Carlisle.	George Saul, Carlisle, assigned to John Saul, Carlisle.

*Clerk's Name and Residence.*

Wardroper, Edmund, 11, Great Russell Street, Bloomsbury.  
 Ward, William Webb, 15, Cumming Street, Pentonville; Stafford; and Hampton Street.  
 Whall, Robert, 7, South Molton Street.  
 Waller, Thomas Francis Sawdon, 87, Fenchurch Street.  
 Walmisley, John Richard Lambert, North Street, Westminster.  
 Wake, William, 25, Frederick Place, Hampstead Road; Sheffield; Eccleston Street.  
 Wright, John Hippolite, Lincoln Chambers, Lincoln's Inn Fields.  
 Withington, George Bancroft, Manchester.  
 Yetts, Joseph Musket, 14, Wakefield Street, Regent Square; Great Yarmouth; 8, Montpelier Row, South Lambeth; 5, Warwick Court.

*To whom articled, assigned, &c.*

Richard Wardroper, the elder, Midhurst; assigned to Chas. Jas. Palmer, Bedford Row.  
 Charles Henry Webb, Stafford; assigned to Gay Hiern, Stafford.  
 John Whall, Worksop.  
 Samuel Spode, Sudbury; assigned to Francis James Osbaldeston, St. Albans.  
 Walter Prideaux, Goldsmiths' Hall.  
 Bernard John Wake, Sheffield.  
 James Leman, 51, Lincoln's Inn Fields.  
 William Casson, Manchester.  
 Nathaniel Palmer, Great Yarmouth; assigned to Robert Jackson, 40, Bedford Row.

*Added to the List pursuant to Judges' Orders.*

Wood, William, Liverpool.  
 Crosse, Robert Jennings, 20, Stamford Street.  
 Riccard, Russell Martyn, 7, Furnival's Inn; South Molton; 43, Southampton Buildings; and 36, Frederick Street.  
 Brown, Henry Edward, 5, York Place, New Road; and Little Argyle Street.  
 Portmore, Charles Broadhurst, Ashby-de-la-Zouch; Warwick Court; Derby.

Charles Wood, Manchester.  
 Frederick Chase, Luton.  
 James Edward Jackson Riccard, South Molton.

James Wittit Lyon, Spring Gardens.

Edward Fisher, Ashby-de-la-Zouch; assigned to William Dewes, Ashby-de-la-Zouch.

*Notices served at the Master's Office on the 30th October.*

Cox, William, the younger, Drummond Street.  
 Preston, Charles, 5, New Milman Street; and Great Yarmouth.  
 Newman, Richard, the younger, 2, Guildford Street; and Kersey Priory.

Arthur Philip Groom, Henrietta Street.  
 Isaac Preston, the younger, Great Yarmouth.  
 Matthew Brettingham Kingsbury, Bungay; ass'd to John Chevallier Cobbold, Ipswich; assigned to Alfred Cobbald, Chancery Lane.

**SUPERIOR COURTS.****Vice Chancellor's Court.****CUSTODY OF INFANTS ACT.**

*The Vice Chancellor, although he is not named in the Custody of Infants Act (2 & 3 Vict. c. 54), is comprehended under the words "The Lord Chancellor of England," by virtue of the act appointing the Vice Chancellor (53 G. 3, c. 24).*

Mr. Knight Bruce appeared in support of a petition presented by a married lady under the Custody of Infants Act,<sup>a</sup> praying for an order to have access to her children. She stated in her petition that about two years ago she had

been labouring under an impression of great misconduct on the part of her husband, communicated to her by a person who was then supposed to be friendly to her. Acting upon these representations, she had separated from him. Sometime afterwards she had reason to doubt the accuracy of the representations made to her. She therefore became desirous of a reconciliation and of returning home, on account of her children. With that view she wrote to her husband several letters of submission, expressing her anxiety to be reconciled,—to none of which did she receive any

<sup>a</sup> 2 & 3 Vict. c. 54. By the first section it is enacted "that it shall be lawful for the Lord Chancellor and Master of the Rolls in England, and for the Lord Chancellor and the Master of the Rolls in Ireland respectively, upon hearing of the petition of the mother of any infant or infants being in the sole custody or control of the father thereof, or of any person by his authority, or of any guardian after the death of the father, if he shall see fit, to

make order for the access of the petitioner to such infant or infants, at such times and subject to such regulations as he shall deem convenient and just, and if such infant or infants shall be within the age of seven years, to make order that such infant or infants shall be delivered to and remain in the custody of the petitioner until after attaining such age, subject to such regulations as he shall deem convenient and just." (The act is printed in full, 18 Leg. Obs. 356. See also 19 Leg. Obs. 20.)

answer, except one suggesting that any further communication should be made through his solicitor. She wrote to the same effect to the solicitor, and his answer was that he had no instructions in the matter. Before the act under which the petition was presented was passed the petitioner had instituted a suit for conjugal rights in the Ecclesiastical Court. That suit being defended was still pending. The petitioner stated that she was labouring under great anxiety of mind respecting her six young children, none of whom she had been permitted to see. The husband was a gentleman of large fortune, and resided at Southgate, where, so late as the 10th of October, he was known to have been. The lady's solicitor had since made inquiry for him, and he could nowhere be found. It was supposed he had gone abroad with the children, and the object of this application was to substitute service of the petition.

The *Vice Chancellor* asked what jurisdiction he had to substitute service?

*Mr. Knight Bruce*.—The act said nothing about service. The Court might grant the order merely on the petition, although it was consistent with the practice of the Court to require service.

His Honor replied, that to grant an order *ex parte* would not be doing common justice. He could readily conceive so gross a case as to require the interference of the Court in that way, but this case did not disclose such circumstances. He should take the affidavits and read them.

The *Vice Chancellor*, on a subsequent day, said there was a preliminary question, whether he had jurisdiction under the recent statute, upon which subject he would first say a few words. The 53 Geo. 3, c. 24, under which he was appointed, required that the Vice Chancellor should have full power to hear and determine all causes which shall be at any time depending in the Court of Chancery in England, &c., or which shall be submitted to the jurisdiction of the said Court, or of the Lord Chancellor for the time being, by the special authority of any act of parliament. Now the doubt which was suggested arose from the circumstance that the power of the act, 2 & 3 Vict. c. 54, was given to the Lord Chancellor and the Master of the Rolls, without mentioning the Vice Chancellor. He had gone to the fountain head to find out how that was, and he had the very best authority for stating that the act, as originally drawn, contained the words "The Vice Chancellor," but that they were afterwards struck out, as being virtually comprehended in the words "The Lord Chancellor." He had no doubt, therefore, that he had jurisdiction under the Custody of Infants Act.

*Mr. K. Bruce* said there were circumstances which might render it at present unnecessary for his Honor to give judgment on the point whether he would order substituted service of the petition; but if it should become necessary to trouble his Honor on the point, he would take care to do so before his Honor

should have forgotten the mass of affidavits he had taken the trouble to read.

*Ex parte Mrs. T., in re the Custody of Infants Act*.—At Westminster, November 4th and 8th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

FREEMAN BY BIRTH.—QUO WARRANTO.

The charter of the borough of Maldon granted the right to the freedom of that borough to different classes of persons, and among other things, declared, that every daughter of an admitted freeman should have a right to nominate and appoint her husband a freeman; and further, that if any daughter of an admitted freeman died "leaving her husband and child or children or any of them behind her," he and they should be respectively entitled to the freedom of the borough in the same way as if her husband had been admitted during her life. A., a stranger, married the daughter of a freeman—she died before her husband was admitted a freeman—he married again, and had a son by his second marriage. Held, that this son was entitled to the freedom by birth.

This was a proceeding in the nature of a *Quo Warranto*, to try by what authority the defendant claimed to exercise the privileges of a freeman of the borough of Maldon. The defendant had pleaded a right to the freedom in virtue of his birth, his father having been the husband of the daughter of a freeman. The plea stated in substance, that long before the passing of the statute in the information mentioned, (the Municipal Corporation Act) his Majesty Geo. 3 was pleased to grant to the borough of Maldon a charter, which, after reciting that the borough was an ancient borough, but had then (in 1810) fallen into decay, declared that for the purpose of restoring the borough to its ancient state, his Majesty had been graciously pleased to grant it certain rights, liberties, and privileges. The letters patent described six classes of persons who might be entitled to the freedom of the borough. The first class was to consist "of every person who had been admitted into the freedom of the borough before the corporation had fallen into a state of decay." The second class "of every person who by the usage and custom of the borough would have been entitled by birth and servitude to his admission into the freedom of the borough, and to be of the commonalty thereof, in case the corporation had not fallen into decay so as to prevent his obtaining such admission." The third class. "Every person who, if such last-mentioned persons had been admitted unto the freedom of the borough, would by the said usage and custom have derived title to the same freedom by birth or servitude, by, through, or under them, or any of them, in case the said corporation had not fallen into decay, shall and may within six calendar months from the date of these presents, &c." be admitted.

The fourth class. "All the children or apprentices of such persons so admitted by virtue of these presents shall have the same right, title, and claim to their freedom, and to the power of conferring the same hereafter, as if their respective parents or masters had been admitted to their freedom so soon as they would have been entitled thereto in case the same corporation had not fallen into decay."

The fifth class. "Each and every daughter of every person who was heretofore admitted unto the freedom of the said borough, or who shall be duly admitted to the freedom of the same by these presents, or, being now deceased, would be entitled to be admitted into the same if he were now living, shall have the same right to nominate and appoint her husband to be a freeman of the said borough as the daughters of freemen possessed before the said corporation fell into dissolution and decay."

The 6th class.—"And that in all cases in which a woman, being the daughter of any person who was duly admitted into the freedom of the said borough before the said corporation had fallen into decay, or of any person who by the usage and custom of the said borough would have been entitled by birth or servitude to his admission to the freedom thereof, in case the said corporation had not fallen into decay, hath been married and hath died before the granting of these our letters patent, leaving her husband and child or children, or any of them behind her, or who being now living and a widow hath a child or children lawfully begotten, shall respectively have, enjoy, and be entitled to the same rights as he and they would have been entitled to if such woman had upon her said marriage conferred the freedom of the said borough upon her said husband according to the usage of the said borough, and her said husband had been thereon duly admitted thereto. And all ancient customs, &c. shall be observed."—Before the grant of the letters patent, every daughter of a freeman of the borough could, during her life, confer upon her husband the right to the freedom of the borough, and he would then have a right to be admitted to the same. The plea stated that Bunting the elder, before the grant of the letters patent, and after the corporation had fallen into decay, was lawfully married to Sarah, the daughter of Isaac Nevitt, who had been duly admitted a freeman of the borough. She died, leaving John Bunting the elder, her husband, her surviving. She had nominated him a freeman, but he had never been admitted to his freedom. After her death her husband married one Elizabeth Richardson, and the defendant was the son of this second marriage.

The defendant claimed to be a freeman in right of his father, in the same way as if his father had been an admitted freeman of the borough. There was a demurrer to the plea, and the question intended to be raised was, whether there was any thing in the charter to restrain the right of a person so circumstanced.

It was argued for the prosecution that the father did not fall within the first class of persons mentioned in the charter, because he

had not been admitted into the corporation before the corporation fell into decay: that he did not fall within the second class, because he was not a person who by the usage of the borough would have been entitled to be admitted by birth or servitude: that he did not fall within the third class, because that referred only to persons who by usage or custom would derive their title through those who claimed by birth or servitude: and that he did not fall within the fourth class, because he was not the child or apprentice of a person who had been admitted under the charter within six months, as provided for in the regulations respecting the third class.

The case was argued by Mr. Serjeant Stephen, in support of the *quo warranto*, and by Mr. Butt for the defendant. The points taken in argument are fully adverted to in the judgment.

Lord Denman, C. J.—I think that the words of the charter are clear. I shall not enter into the argument as to what was intended, nor refer to reasons of analogy drawn from other parts of the instrument, for I find words which shew me that the party is clearly entitled to the right he claims. He has the same right as his father had conferred on him. That brings us to the question what that right was. I think his right is fully established by the words describing the 6th class. The only doubt that was raised in my mind was on the words in the fourth clause, which gave the right of conferring the freedom hereafter; on which it was argued, that if it was intended that he should have the right complete at the time, it would have been so stated. But I think that the words "confer the freedom hereafter" do not mean the right of transmitting from son to son, but the right of transmitting by marriage. I think that the son here had the same right as if the title had been fully conferred on the father during the wife's life, and he had been duly admitted on such title.

Mr. Justice Patteson.—I am entirely of the same opinion. I was struck in the course of the argument with the construction attempted to be put, for the prosecution, on the 4th clause; and if it was necessary for the defendant to avail himself of that part of the charter, I should probably be of opinion that he could not do so, because he had not been admitted. But he does not found his claim on that clause, but on a subsequent one. The words of the 4th clause, too, appear to me to bear the construction of relating to the daughters of persons who have been so admitted, so that the words "confer hereafter" have a full meaning given to them, without applying them to a case like the present.

Mr. Justice Williams.—I am of the same opinion. What was the object of this charter? It was to remedy, as much as possible, the decay of the corporation. The plain meaning of the words "any of them," in the 6th clause, is any husband or any child, &c. The husband, then, clearly stands in the same predicament as if he had been admitted in his wife's lifetime.

*Mr. Justice Coleridge.*—The defendant claimed under his father, J. Bunting, the elder. Then the question is, in what situation the father stood. It seems to me that his case fell within the words of the 6th clause. His wife was the daughter of a person entitled to the freedom. She had died before the charter was granted, leaving her husband her surviving; but then the charter says "leaving a husband or child or children or any of them." The word "any" here, must apply to the husband as well as to the children. She having died, such husband shall have the same right as he would have had if on her marriage she had conferred the freedom upon him, and he had been duly admitted. If the husband falls within these words, then what is the true construction of them? It is contended that the husband was only intended to enjoy the freedom for his life. I do not see any good ground for such a construction. The prosecutor is bound to make out that it exists. The husband was a freeman of a corporation, and as he had the same sort of freedom as other persons in the corporation, he was within the letter and spirit of the charter, and so is his son. As to the argument of convenience, I think it is in favour of this claim, for the rejection of the claim would go to restrict the freedom to freedom for life, instead of making it transmissible: besides which it would create two classes of freemen in the borough, enjoying different rights, and that would affect the borough in many respects; for instance, in the taking of apprentices, as one set of masters would be able to confer the freedom, and another would not. Looking, therefore, at the words and spirit of the act, and at the convenience and justice of the case, the construction clearly demanded seems to me to be in favour of the defendant.

Judgment for the defendant.—*The Queen v. J. Bunting the younger.* M. T. 1839. Q. B. F. J.

#### Queen's Bench Practice Court.

**IMPARLANCE.—SCIRE FACIAS.—JUDGMENT IN EJECTMENT.—WRIT OF RESTITUTION.**

*Sensible, that imparlances in proceedings by sci. fa. are not abolished since the passing of the Uniformity of Process Act.*

*Chilton* moved for a rule nisi to rescind an order made by Mr. Baron Maule, for setting aside a judgment under these circumstances. It was an action of ejectment, and judgment was obtained by the lessor of the plaintiff. This was allowed to remain more than a year without issuing execution upon it. A *scire facias* was then issued on the judgment, and without giving the defendant an imparlance, a writ of *habere facias possessionem* was then issued, and possession given to the lessor of the plaintiff. An application was then made to Mr. Baron Maule, to set aside the judgment so signed, and the writ of possession so executed. His Lordship accordingly made an order to that effect, on the ground that an imparlance had

not been given by plaintiff in the proceedings by *scire facias*. The question was, whether imparlances were abolished in proceedings by *sci. fa.* as in ordinary cases. In the case of *Frean v. Chaplin*, 2 Dowl. 523, it was held that imparlances were not abolished by the Uniformity of Process Act, but that decision was overruled by *Wigley v. Tomlins*, 3 Dowl. 7. It seemed by analogy that the imparlances were abolished in the case of proceedings by *sci. fa.*

*Littledale*, J.—I don't think the Uniformity of Process Act can be considered as applying to proceedings by *sci. fa.* However, you may take a rule, as it is fit the question should be discussed.

Rule granted.—*Doe d. Phillips v. Roe,* M. T. 1839. Q. B. P. C.

#### Common Pleas.

##### JUDGMENT AGAINST CASUAL EJECTOR.

*In ejectment where there were several co-tenants, five of whom only had been served, the Court refused to grant a rule nisi against those upon whom no service had been effected, for judgment against the casual ejector.*

*James* moved for judgment against the casual ejector. There were seven tenants, of whom five had been served. He moved that there should be a rule nisi against those who were not served, and a rule absolute against the rest. He cited *Doe dem. Right v. Wrong*, 2 Chit. Rep. 175; they were not joint-tenants.

*Tindal*, C. J.—You might turn two persons out of possession who never heard of the proceedings. They are not joint tenants, but only co-tenants. You may take a rule as against five, but not as regards the other two.

Rule accordingly.—*Doe dem. Skee v. Roe*, M. T. 1839. C. P.

##### FILING ACKNOWLEDGEMENT OF MARRIED WOMAN.—AFFIDAVIT.

*Where, in an application to file the acknowledgement of a married woman, it duly appeared by the certificate that the party was of full age, but in the affidavit the same fact was stated, the deponent adding, "as he verily believed;" the Court refused to order the officer to file the acknowledgement, and directed the affidavit to be amended.*

*Bere* moved that the Court would direct the clerk of the enrolments to file the acknowledgement of a married woman, under the Fines and Recoveries Act. The certificate was regular, and stated that the married woman, who was in Van Dieman's Land, was of full age, but in the affidavit it was stated that the party was of full age, "as the deponent verily believed." It was submitted that this was sufficient, especially as there was no doubt of the fact alleged.

*Tindal*, C. J.—You had better supply the fact in your affidavit, as it is so easy of authentication;

Rule refused.—*Re Ann Coverdale*, M. T. 1839. C. P.

## JUDGMENT AGAINST THE CASUAL EJECTOR.

An action of ejectment was brought to recover possession of a piece of land, taken into a road under the provisions of an act of parliament. A motion having been made for judgment against the casual ejector, service having been effected on the commissioners, in whom the road was vested, the Court refused to grant the rule.

*Robinson* moved for judgment against the casual ejector. The action of ejectment was brought to recover land taken into a public road under the provisions of an act of parliament, as it was alleged, illegally. The road was declared by the act to belong and be vested in certain commissioners as trustees, and service had been effected on one of the commissioners, and upon their clerk.

*Tindal, C. J.*—I do not see that you have adopted the right course in seeking your remedy. There is no one in possession, and how can you swear that you have served the tenant in possession? You cannot term the commissioners tenants in possession. They are not so much so as the public who pass over the road.

Rule refused.—*Doe d. White v. Roe*, M. T. 1839. C. P.

## COPY OF WRIT OF SUMMONS.—INDORSEMENT.—AMENDMENT.

The indorsement on the copy of a writ of summons directing the defendant to pay the amount of the debt and costs "to the plaintiff or his attorn:"—the Court refused to set aside the copy of the writ, and held that the indorsement might be amended.

*Martin* moved for a rule to set aside the copy of the writ of summons served on the defendant in this action, on the ground of an irregularity in the indorsement. An indorsement was necessary to be made, stating the amount of the plaintiff's claim for debt and costs, and that the amount should be paid to the "plaintiff or his attorney." Here the words quoted were written "the plaintiff or his attorn," and the indorsement there stopped. It was admitted that the attorney's name was given in the writ, but it had been repeatedly held that the rule must be strictly followed.

*Tindal, C. J.*—The indorsement may be amended on an application to the Court. It is evidently an error.

*Martin* urged that it had been laid down that such an amendment could not be made.

*Coltman, J.*—The distinction has been drawn between the cases arising under any statute, and under a rule of the Judges. In the former instance an amendment will not be allowed, but under the latter the Court has decided that it may be made.

*Tindal, C. J.*—On an application the amendment might be made, as the indorsement is ordered by a rule of the Judges.

Rule refused.—*Anon.*, M. T. 1839. C. P.

## Exchequer of Pleas.

## JUDGMENT AS IN CASE OF A NONSUIT.—INSUFFICIENT AFFIDAVIT.—EXCUSE.

In order to excuse a default in proceeding to trial pursuant to notice, some excuse must be alleged in shewing cause against the rule for judgment as in case of a nonsuit, beyond the mere fact of being unprepared to go to trial.

*Peacock* shewed cause against a rule nisi for judgment as in case of a nonsuit, obtained by *Tomlinson*. The affidavit on which cause was shewn stated, that the defendant's attorney had been desired by his client to countermand notice of trial, as he was not then prepared to try. Pursuant to this direction he had countermanded it; and since that time he had been unable to find the plaintiff; but he verily believed that his client would be able to go to trial at the next assizes.

*Tomlinson*, in support of the rule, contended that although a very slight excuse might be sufficient for not proceeding to trial, yet that there must be some excuse; here, however, there was none.

*Lord Abinger*.—No excuse is here stated for not proceeding to trial, and therefore the present rule must be absolute for judgment as in case of a nonsuit.

Rule absolute.—*Willis v. Jopkin*, M. T. 1839. Excheq.

## Queen's Bench.

Michaelmas Term, 1839, 3d Victoria.

15th November, 1839.

THIS Court will, on the 26th instant, hold sittings, and will proceed in disposing of the business in the *Peremptory Paper* on that day, and in the *New Trial Paper* on the 27th and 28th instant, and in the *Special Paper* on the 29th and 30th instant; and on the last mentioned day will give Judgment in Cases previously argued.

By the Court.

## THE EDITOR'S LETTER BOX.

We are informed that the case reported p. 30, *ante*, of an application to the Court by a candidate to be examined this term, who had omitted to give one of his notices through a misunderstanding with one of the Judge's clerks, was that of "*Ex parte Goode*," and not "*Ex parte Rowland*."

The long Lists of Causes in all the Courts, which we gave on the first day of term, has thrown some matter into arrear, but we shall speedily dispose of it.

The List of Re-admissions for the last day of this Term, which we gave last week, were more pressing than the Admissions, which relate only to Hilary Term. Objections to any of the Re-admissions intended to be made through the Law Society should be stated without delay.

The "Un-Common Law Rhymes" have been received, and will probably appear in the next Monthly Record.

# The Legal Observer.

SATURDAY, NOVEMBER 23, 1839.

"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## POINTS AS TO TITLE.

The important question involved in the construction of the stat. 3 & 4 W. 4, c. 27, as to the length of title which must now be produced, has not, so far as we are aware, been the subject of any direct decision. It was, however, incidentally touched upon in a very late case. In this case, the main point was, whether a title was marketable where there are no title deeds whatever in the possession of the vendor. As to this, the following rule may be collected from Mr. Preston's work on Abstracts.\* Sometimes the first deed in the abstract is of a date falling within the requisite period ; but the history of the title is traced through a period of that duration, by shewing, either from the recitals, or from a short history of the title in the description of the parcels, or from the assessments to the land-tax, or from a schedule of the title deeds, that the ownership on which the title depends, commenced upwards of the required number of years since. And this, in general, is deemed satisfactory by conveyancers, especially after an inquiry for wills, settlements, &c, as far as that inquiry can reasonably be prosecuted, or where the property is small.

In the case to which we allude, a reference to the Master was not to report whether a good title could be made to the property, but to approve of an indemnity to be given to Lord Kensington. "It is not the usual practice, (said Mr. Pemberton, *arguendo*) to require the same extent, or the same accuracy of proof of title, where property is proposed as an indemnity against a contingent loss, which may never occur, as is

necessary in the case of a mortgage or purchase : a purchaser or mortgagee is entitled to have a good marketable title, while for the purpose of an indemnity, a *prima facie* good holding title is sufficient. The late statute 3 & 4 W. 4, c. 27, has abridged the time during which a party can recover land, the extreme limit is now forty years : the effect of this legislative enactment is to diminish the extent of title formally necessary to be shewn, and now a forty years' title ought to be deemed a marketable title, 1 Sugden V. & P. 330. In all cases there may be outstanding estates, but here there is no suggestion or ground of suspicion that any exist. *Watkins* has been in undisturbed possession of the property for twenty-seven years, and there is evidence of reputation of the ownership of Lloyd and *Watkins* for more than 100 years. It has been decided that the absence of title deeds does not necessarily make a title bad, 1 Prest. Abst. 23. [The *Master of the Rolls*. I am far from thinking otherwise.] Conveyancers consider the land-tax assessments as evidence of *seisin*." The *Master of the Rolls* said—I think that the evidence here is not sufficient, because it rests upon information and belief ; I am perfectly satisfied that there are good titles in which the origin cannot be shewn by any deed or will ; but then you must shew something that is satisfactory to the mind of the Court,—that there has been such a long uninterrupted possession, enjoyment and dealing with the property as to afford a reasonable presumption that there is an absolute title in fee simple. Now it rests here on the information and belief of a gentleman, without stating the circumstances upon which his information and belief rest : I think that he ought to have stated the

\* Prest. Abs. 20, 29, 252.

circumstances to have enabled the Court to judge of them: not to state his belief, but to bring to the Court the means of founding a presumption. I do not think that the evidence here is sufficient, and on that ground it is, that I allow these exceptions. I confess I do not see any reason to think that this property may not be of ample value for the purpose of indemnity. It seems to me that the property is sufficient in point of value; on the other point, I think the case must go back to the Master.<sup>b</sup>

It will be seen that it was laid down by counsel in this case, without disapprobation from the Court, that a forty years' title is now sufficient.

Another disputed question in the law of marketable titles is in what cases on the purchase of a lease, the purchaser can compel the production of a lessor's title. We endeavoured in our ninth volume, p. 113,<sup>c</sup> to collect the cases and state the law as to this, and we may here, after this interval, recapitulate our conclusions.

Where an auctioneer on a sale of leaseholds, omitted the usual clause, dispensing with the necessity of producing his employer's title, Lord *Ellenborough*<sup>d</sup> considered the negligence so gross as to preclude the auctioneer from recovery for his trouble in the sale. But it has been very recently decided<sup>e</sup> that where, on the sale of leasehold property, one of the conditions of sale was that the vendor "should not be obliged to produce the lessor's title" the vendee having *aliiunde* discovered certain defects in the lessor's title, he was entitled to resist the completion of his purchase, notwithstanding the above condition.

We are, however, here to consider the cases where there has been no stipulation on the subject by the parties, and they are left to their legal rights. It is now well settled in Courts of Equity, that a vendor cannot compel a specific performance of a contract for the purchase of leaseholds, without furnishing an abstract of title,<sup>f</sup> on the principle, among others, that he who seeks equity must do it. But it has been repeatedly held at common law, that a lessor who enters into a contract for land does not thereby impliedly engage that he will

deliver to the lessee an abstract of the title to the freehold;<sup>g</sup> and Lord *Tenterden* very recently<sup>h</sup> decided at *nisi prius*, that upon the sale of a lease without any stipulation for making a good title, or for the production of a lessor's title, that the purchaser cannot insist on its production.

However, these cases at common law may now be considered to be overruled. In *Roper v. Coombes*,<sup>i</sup> where *A.*, by agreement, made on the 31st of March, agreed to grant a lease of certain premises, *habendum* from the 29th of September then next for twenty-one years, in consideration of 100*l.*, of which 10*l.* were to be paid on the 13th of April, and the residue on having possession of the premises, but no time for granting the lease was fixed by the agreement, and *B.* being called upon to pay the 90*l.*, demanded an abstract of title, which was refused, whereupon he gave notice that he would rescind the contract, and commence an action to recover the 10*l.* which he had paid. It was held that he was entitled to recover, it being proved at the trial that at the time when the action was brought, *A.* had no power to grant the lease contracted for.

In a still later case<sup>j</sup> it was held by Lord *Denman*, C. J., and the Court of King's Bench, "that, unless there be a stipulation to the contrary, there is in every contract for the sale of a lease, an implied undertaking to make out the lessor's title to demise, as well as that of the vendor to the lease itself, which implied undertaking is available at law as well as in equity;" and the Court refused to adopt the distinction acted upon in *George v. Pritchard*.

It still remains undecided whether a lessee can in equity, as plaintiff, call for the lessor's title; but perhaps it is not too much to say, that according to the present feeling of the Courts on this subject, he would succeed in such an application.

Where the contract is between the assignor and assignee of a lease, it appears that if the assignor can compel the production of the freehold title, the assignee will be entitled to its production,<sup>k</sup> and where it is impossible for him to do so, a purchaser may recover his deposit and costs.<sup>l</sup> The latest case on this point is the following,

<sup>b</sup> *Cotterell v. Watkins*, 1 Beavan, 361; and see *Cotterell v. Lord Kensington*, 2 L. O. 60.

<sup>c</sup> See also 9 L. O. p. 182.

<sup>d</sup> Cited by Lord *Denman*, C. J.; *Souter v. Drake*, 3 N. & M. 45.

<sup>e</sup> *Shepherd v. Kentley*, 1 C. M. & R. 117.

<sup>f</sup> *Fildes v. Hooker*, 2 Meriv. 424; *Purvis v. Rayner*, 193; *White v. Foljambe*, 11 Ves. 337; 18 Ves. 505.

<sup>g</sup> *Temple v. Brown*, 6 Taunt. 60; *Gwillim v. Stone*, 3 Taunt. 433; *Sug. V. & P.* 306.

<sup>h</sup> *George v. Pritchard*, 1 Ry. & Moo. 417.

<sup>i</sup> 6 B. & C. 534; 9 D. & R. 562

<sup>j</sup> *Souter v. Drake*, 3 Nev. & M. 40.

<sup>k</sup> See *White v. Foljambe*, 11 Ves. 337.

<sup>l</sup> *Flureau v. Thornhill*, 2 W. Bl. 1078.

which, however, does not decide the main question, although it bears on it.

A party contracted for the purchase of the benefit of an agreement for the lease of a public house, and also of the stock and good-will. He entered into possession before the lease had been granted, paid part of the purchase money, and mortgaged his interest: Held, by Lord *Langdale*, M. R., that after this mode of dealing he was not entitled to call for the production of the lessor's title, or for evidence that the lease was made in conformity with the power under which it was granted.<sup>m</sup>

### WERE I SOLICITOR GENERAL!

"Were I Solicitor General, we should see how they would look then," said Mr. Horatio Luckless, on arriving at Pump Court. He had just returned from Westminster, where he had not failed in attendance on any day in the Term; but where, alas! he had as yet not had an opportunity given him of addressing any of the fifteen Judges. He now wound his way up his long dirty staircase to the very topmost story.—pulled down the little notice of his clerk, pinned to the outer door, "return at six,"—drew from his pocket his ponderous key, unlocked the door, and pulled it open. Here he saw his fire burning; his books and furniture all right; but nothing, I regret to say, to remind him that during his absence any client had appeared. He now prepared for his dinner: his laundress had placed two mutton chops in a plate ready for him in his clerk's room, and these he now essayed, by the help of his bachelor's oven, to cook himself. "Oh!" said he, fixing them before the fire, "more improbable things have come to pass than that. It is true, I have been called some time, and have not made much way yet, but who can say what to-morrow may bring forth? Who knows that the government may not take me on as counsel in the special commission! They will want a working junior well used to sessions practice. Well, down I go. The third day Frost is brought up; Campbell happens to be taken ill. I chance to have got up all the facts. I am asked to take the lead. This, of course, I consent to do, although a little nervous at first. Well, now comes my turn. I open in grand style, and go through the whole statement to the complete satisfaction of the Court. Tindal, at the close, gives me

an approving smile. Then we go on with our proofs. The case is on the point of breaking down, when, by the judicious course I pursue, I at once restore it, and every thing goes right for a conviction. Maule tells me afterwards it could not have been done better. Well, so far so good. I return to town,—I find that one of the cabinet had been present all the time, disguised as an attorney's clerk. I learn, accidentally, he has mentioned me to Lord Melbourne, who it is well known is puzzled as to whom he shall appoint. I am sent for,—I am asked to take it. Of course, I assent. I am appointed Solicitor General. I am introduced at once into the House of Commons, and make my maiden speech. The House is electrified,—the Tories tremble prodigiously. Campbell is promoted. I am offered the Attorney Generalship, which I of course accept. All this time I have been in full practice. I am presented to the Queen, who this time takes particular notice of me, and invites me to dinner, which of course I accept. She is charmed with my wit and information. Melbourne on this looks somewhat displeased, but I restore his good humour by my admirable advice to him on the conduct of his government, and my brilliant speech in the House in its defence. Cottenham retires,—I am offered the Great Seal. I am appointed Lord Chancellor of Great Britain, and retain the entire confidence of the Queen. I am of course created a Peer. I should like to know what Miss Jenkins, who declined to dance with me a second time last Tuesday evening, would say then. I meet with complete success in the House of Lords. Brougham and Lyndhurst sink into insignificance. I preside over the Court of Chancery with mingled urbanity and dignity; the arrear is soon disposed of—I reduce it to a mere shadow."—And here, alas! poor Luckless cast his eyes on his mutton chops. In his dream of greatness he had forgotten to turn them, and, I grieve to say, they were reduced to a cinder!

### THE PENNY POSTAGE ACT.

The Penny Postage Act will come partially into operation on the 5th of next month (December), and as we take much interest in the measure, which we consider a great boon to the profession, we shall endeavour to facilitate it by every means in our power. The first instalment will reduce the postage on all general post office letters of half an

<sup>m</sup> *Haydon v. Bell*, 1 Bea. 337.

ounce weight to *fourpence*, each additional half ounce costing an additional *fourpence*. Letters embraced by the circle of the 2d and 3d delivery may be sent for 1*d.* by pre-payment. The main object of both these alterations, we conceive, is to accustom the post office all over the country to the more extensive change which will follow. It will be observed that our work, and similar unstamped publications may, after the 5th of December, be sent through the post office for 1*d.* to all places within the range of the 2d and 3d deliveries, a very large district, and, on the larger measure coming into operation, to any part of the kingdom on payment of the same sum of *one penny*. [See the act in the next page.]

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#### CAUTION.—STURDY BEGGARS.

THE Mendicity Society has been so good as to send us an account of a gang of sturdy beggars which has lately infested the neighbourhoods of the Courts of Law at Westminster, and of the Inns of Court; and knowing the charitable and good-natured habits of our professional brethren, we very readily use our best endeavours to put them on their guard as to the imposition attempted to be practised on them. These fellows, we understand, consist of a knot of some twelve or fifteen persons, who appeal to the charitable, sometimes singly, sometimes in twos or threes, disfigured with patches, and fluttering in rags, obtruding their feigned wounds on the public, and representing themselves to be in a starving condition. They have a long tale about their grievances, and declare they were once in a respectable way of business, but are now quite broken down. They seem to have been, by their own account, a kind of hand-loom weavers, spinning long yarns, which, having no competition, they sold at a considerable profit; and more, indeed, as they sometimes admit, than they were worth; but that about the year 1834 their patent expired, and that ever since their business has been falling off. A warrant, it seems, was about this time issued against them, which they say was illegal, and this did all the mischief, for the workmen in the adjoining courts having heard of it, came and drove most of them away from their old place of business. This warrant, it seems, was served on them quite suddenly one morning, by one Botherum, a very knowing fellow, who had long had a spite against them; and happening to know the

Lord Chancellor's Chaff-wax, he clapped the seal to a piece of parchment, and got it signed, and served it on them without more a-do. They, thinking it all right, were struck quite dumb on beholding it, and did not dare to make any opposition to it. Indeed, knowing their guilt, they have not ventured to say a word until lately, when hearing that Botherum was himself out of employ, or dead as some say, they have began to make a prodigious outcry, and have resorted to all sorts of devices to impose on the charitable and humane. Some have gone about the streets with a wig on a pole, making a most horrible howling, and singing songs of a seditious tendency. Others assail any respectable old gentleman or lady they may meet with; and request that they will purchase their small articles, which they declare they are willing to sell at a sacrifice, whereas they are in fact worth little or nothing. Two or three of them have made themselves especially conspicuous. One sturdy looking fellow, with a most determined eye and manner, is a sort of leader among them, and especially noisy; he may be called, in fact, a Solicitor General for the whole gang. This man, on being offered a Mendicity ticket, is remarkably saucy; says he only wants his rights (or writ of rights, as he sometimes calls it), and that he will have 'em. It is well known that this hardened individual is an excellent workman, and has more than he can do; and on being followed to his own home, may often be found sitting at a table with a good hot dinner, and, in short, every delicacy of the season, laughing at the doleful face he has put on, and telling the tricks he has played. Another of the crew is also very well off, in spite of his pitiful tale, which is of the most artful kind. He has a long tale about a suffering wife, and poor helpless infants who are about to be torn asunder, and would bring tears in your eyes if you listen to him. It has however, been ascertained that the babies he talks about are not his own, but merely lent out for the job. He has lately taken to pick up work at the theatres, all of which he lays to Botherum, but it is well known that he need not go there if he did not like, having plenty to do, and being a pretty hand at his trade. Perhaps these are the two most notorious of the gang, which is generally called "the Old School;" and we have, we hope, said sufficient to put our readers on their guard against them. They are all well to do, and are none of them out of work unless they like. Several of them job about the Houses of Parliament when they are sitting, and pick up a good deal in this

way ; others take trips in the country, or to use the beggars' slang, " Go the circuit ! " They are all of them far above want, and if well searched have plenty of money in their pockets. So well indeed are they provided for, that they have lately built themselves a new house, where the other day they gave a grand entertainment to the master tradesmen in their craft, and seemed in no kind of distress at all.

We have now said enough ; but we cannot close this short notice without adding, that in the opinion of some, this gang of fellows have much more serious intentions. Although the recent insurrection of the Chartists has for the present been suppressed, the spirit of insubordination, as some think, has shown itself in this form in the very heart of the metropolis, and has extended itself to the neighbouring city of Westminster ; and although the present insurgents have not as yet raised the same banner as those of Newport and Pontypool, yet, little doubt remains in some minds that they are all confederates, and are parts of a mighty chain which extends itself throughout the whole country ; and indeed, this conspiracy is one of those not without precedent in the annals of history, the number of which is confined to a few, who, by long brooding over their supposed grievances, have become full of the most unreasonable wishes. However, we do not assert this as our own opinion.

#### CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT. No. XIV.

##### REGULATION OF THE DUTIES ON POSTAGE. 2 & 3 Vict. c. 42.

*An Act for the further Regulation of the Duties on Postage until the Fifth Day of October One thousand eight hundred and forty.* [17th August 1839.]

*Treasury may alter rates of postage.*—Whereas it is expedient that the present rates of inland postage on letters should be reduced to one uniform rate of a penny charged on every letter of a given weight, to be hereafter fixed and determined, with a proportionate increase for greater weights, parliamentary privileges of franking being abolished, and official franking being strictly regulated, and Parliament pledging itself to make good any deficiency of revenue which may be occasioned by such alterations of the rates of existing duties : And whereas it is expedient and necessary to give by law a temporary authority to the Lords of her Majesty Treasury to take the necessary steps to give effect to such

reduction, and to make orders and regulations for the same ; which reductions, orders, and regulations shall have force and effect to the fifth day of October one thousand eight hundred and forty, and no longer : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the Lords of the Treasury, from time to time, and at any time after the passing of this act, by warrant under their hands, to alter, fix, reduce or remit all or any of the rates of British or inland or other postage payable by law on the transmission of post letters, and to subject such letters to rates of postage according to the weight thereof, and a scale of weight to be contained in such warrant, (without reference to the distance or number of miles the same shall be conveyed,) and to fix and limit the weight of letters to be sent by the post, and from time to time, by warrant as aforesaid to alter or repeal any such altered or reduced rates, and make and establish any new or other rates in lieu thereof, and from time to time, by warrant as aforesaid, to appoint at what time the rates which may be payable are to be paid, that is to say, whether on posting the letter or on the receipt thereof, or at either of those times, at the option of the sender : Provided always, that all such warrants shall be inserted in the London Gazette ten days at least before coming into operation, and shall within fourteen days after making the same be laid before both Houses of Parliament (if then sitting), or otherwise within fourteen days after Parliament shall meet.

2. *Rates to be charged by Postmaster General.*—And be it enacted, that the rates of postage from time to time to be altered or reduced and fixed by any such warrant shall be charged by and be paid to her Majesty's Postmaster General, for the use of her Majesty, on all post letters to which such warrant shall extend.

3. *Treasury may suspend power of franking.*—7 W. 4, & 1 Vict. c. 35.—And be it enacted, that it shall be lawful for the Lords of the Treasury, by warrant under their hands, to suspend, wholly or in part, any parliamentary or official privilege of sending and receiving letters by the post free of postage, or any other franking privilege of any description whatsoever, as well under an act passed in the first year of the reign of her present Majesty, intituled " An Act for regulating the sending and receiving of Letters and Packets by the Post free from the Duty of Postage," as under any other act or acts of parliament now in force, and to make such regulations for the future exercise of official franking as they shall think fit : Provided also, that every warrant to be issued by the Lords of the Treasury for the suspension of the parliamentary privilege of franking shall be inserted in the London Gazette ten days at least before coming into operation, and shall, within fourteen days after

making the same, be laid before both Houses of Parliament (if then sitting), or otherwise within fourteen days after parliament shall meet.

4. *Treasury may regulate Twopenny and Penny Posts.*—And be it enacted, that it shall be lawful for the Lords of the Treasury, by warrant under their hands, and inserted in the London Gazette ten days at least before coming into operation, to suspend, wholly or in part, the regulations and privileges established and given by law in respect of letters sent by the Two-penny Post in London and Dublin, and also by any Penny Post, and in respect of any other letters which may be now sent by the post at a low or reduced rate of postage, or free of postage, and to declare and direct that all and every or any of such post letters shall be charged and chargeable with the like rates of postage as any other letters transmitted by the post, or to make such other regulations in respect thereof as in any such warrant shall from time to time be expressed.

5. *Stamped covers.*—Provided always, and be it enacted, that it shall be lawful for the Lords of the Treasury, by warrant under their hands, to be inserted in the London Gazette, (which warrant may be rescinded, varied, or altered as they shall from time to time think fit,) to direct that letters written on stamped paper or inclosed in stamped covers, or having a stamp affixed thereto, (the stamp in every such case being of the value or amount in such last-mentioned warrant to be expressed, and specially provided for the purpose under the authority of this act,) shall, if within the limitation of weight to be fixed under the provisions of this act, and if the stamp have not been used before, pass by the post free of postage, and also to require that every letter sent by the post shall, in the cases to be specified in any such last-mentioned warrant, be written on such stamped paper, or enclosed in such stamped cover, or have such stamp as aforesaid affixed, or that in default thereof, or in case the stamp on which any letter shall be written, or the stamp on the cover in which it shall be inclosed, or to which it shall be affixed, shall be of less value or amount than in such warrant shall be expressed, or shall have been used before, such letter shall be charged and chargeable with such rate of postage as such warrant shall direct.

6. *Providing stamps.*—And be it enacted, that it shall be lawful for the Lords of the Treasury to order and direct the Commissioners of Stamps and Taxes from time to time to provide proper and sufficient dies or other implements for expressing and denoting the rates or duties which shall be directed by any such warrant as aforesaid, and to give any other orders and make any other regulations relative thereto they may consider expedient.

7. *Account to be kept of stamps.*—And be it enacted, that the Commissioners of Stamps and Taxes shall cause a separate account to be kept of the stamp duties arising under this act; and it shall be lawful for the Lords of the Treasury and they are hereby empowered,

by warrant under their hands, from time to time to authorize and require the said commissioners of Stamps and Taxes to direct their Receiver General to pay over such sum and sums of money arising from the said stamp duties as the Lords of the Treasury shall think proper, to the account of the Receiver General of her Majesty's Post Office at the Bank of England; and all such sums of money which shall be so paid over shall be held by the said last-mentioned Receiver General subject to all annuities and yearly sums now charged by law on or payable out of the Post Office revenue, and all other charges, outgoings, and disbursements to which the Post Office revenue is at present liable.

8. *Rates on stamped covers to be deemed stamp duties.*—And be it enacted, that the rates or duties which shall be expressed or denoted by any such dies as aforesaid shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Stamps and Taxes for the time being; and all the powers, provisions, clauses, regulations, directions, fines, forfeitures, pains, and penalties contained in or imposed by the several acts now in force relating to stamp duties (so far as the same may be applicable) shall be of full force and effect with respect to the stamps to be provided under or by virtue of this present act, and to the paper on which the same shall be impressed or to which the same shall be affixed, and shall be observed, applied, enforced, and put in execution for the raising, levying, collecting, and securing of the rates or duties denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes, as if such powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties had been herein repeated and specially enacted with reference to the said last-mentioned stamps and rates or duties respectively.

9. *Letters to be sent as Postmaster General shall direct.*—And be it enacted, that all post letters shall be posted, forwarded, conveyed, and delivered under and subject to all such orders and directions, regulations, limitations, and restrictions as the Postmaster General, with the consent of the Lords of the Treasury, shall from time to time direct.

10. *Masters of outward-bound vessels required to take bags of letters.* 7 IV. 4, and 1 Vict. c. 36.—And be it enacted, that the penalty which by an act passed in the first year of the reign of her present Majesty, intituled "An Act for consolidating the Laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office Laws, and for explaining certain terms and expressions employed in those laws," is imposed on every master of a vessel outward-bound to Ceylon, the Mauritius, the East Indies, or the Cape of Good Hope, who shall refuse to take a post letter bag delivered or tendered to him by an officer of the Post Office, shall henceforth extend and apply to

the master of every vessel outward-bound who shall refuse to take a post letter bag delivered or tendered to him by an officer of the Post Office for conveyance; but every such master shall be entitled to the same gratuities as the master of any other vessel, not being a post office packet, conveying letters for or on behalf of the Post Office.

11. *Treasury may alter gratuities to masters of vessels carrying bags of letters.*—And be it enacted, that it shall be lawful for the Lords of the Treasury to make any reduction or alteration they may consider expedient in the gratuities allowed by law to masters of vessels for letters conveyed by them, for or on behalf of the Post Office, between places within the United Kingdom and between the United Kingdom and the islands of Man, Jersey, Guernsey, Sark, and Alderney, and to allow any gratuities for the conveyance of letters to masters of vessels passing to or from or between any of her Majesty's colonies or possessions beyond the seas, if they shall think fit, not exceeding the gratuities payable to Masters of vessels for the conveyance of ship letters from the United Kingdom to places beyond the seas.

12. *The word "Letter" to be deemed all papers transmitted by post.*—And be it enacted, that whenever the word "letter" or "letters" is used in this act, the same shall be held to include newspapers, and any other packet, paper, article, or thing transmitted by the post, but not so as to deprive newspapers of any privilege they now legally possess of passing free of postage; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in the said act of the first year of the reign of her present Majesty, intituled "An Act for consolidating the laws relative to Offences against the Post Office of the United Kingdom, and for regulating the judicial Administration of the Post Office Laws, and for explaining certain terms and expressions employed in those Laws," so far as those interpretations are not repugnant to the subject, or inconsistent with the context of such provisions.

13. *Quorum of Lords of the Treasury.*—And be it enacted, that wherever the order, consent, or direction, or any other act of the Lords of the Treasury is prescribed or required by this act, such order, consent, direction, or other act may be signified under the hands of the Lords of the Treasury or any three of them.

14. *Continuance of act.*—And be it enacted, that this act, and all warrants issued under the authority of the same, shall absolutely cease and determine on the fifth day of October, one thousand eight hundred and forty, unless Parliament shall declare to the contrary, except in respect of any postage duties which may then have become payable under or by virtue of this act, and of any proceeding for recovery of such duties, and except also as to any offence committed against the provisions of this or any other act, and any fine or penalty incurred by

reason of any such offence, and any proceeding for recovery of any such fine or penalty, or for the punishment of any offender.

15. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed during the present session of parliament.

## SHERIFFS' FEES.—POUNDAGE.

1 VICT. c. 55.

It surely never could have been the intention of the officers of the Courts of Law, under the statute 1 Vic. c. 55, to have allowed to bailiff's for executing warrants under writs of execution, such fees as are enumerated in "*the table,*" in addition to the poundage which the sheriff has hitherto taken, and continues to take. They must have considered that the above mentioned statute repealed the 28th Eliz. c. 4; otherwise what does the sheriff do to entitle him to receive such an enormous profit as 5 per cent. on the first 100*l.*, and 2*½* per cent. on the residue?

Now look at the extravagant working of this law as it now stands, unjust and oppressive alike to defendant as to the plaintiff?

The writ we suppose is endorsed to levy 250*l.*

*L. s.*

The bailiff's fee is . . . . .	1	1
Possession money for ten days . . . . .	2	10
For sale by auction . . . . .	12	19
Certificate and other charges . . . . .	0	19
Sheriffs' poundage . . . . .	8	15

*£25 15*

If against the body the fees are,—

For the bailiff . . . . .	1	1
For conveying the defendant to gaol, 1 <i>½</i> miles . . . . .	1	14
Certificates, &c. . . . .	0	10
Sheriffs' poundage . . . . .	8	15

*£12 0*

And this (it will be borne in mind) must be paid upon every arrest for a sum amounting to 250*l.*, either by the defendant or the plaintiff; by the latter, even if he should lose his whole debt and costs.

The undersheriffs say, that, notwithstanding the table of fees has been expressly framed to meet every part of the official duty performed by "sheriffs, undersheriffs, deputy sheriffs, sheriff's agents, bailiffs, and others," they consider themselves still entitled to demand the poundage, because the statute 1 Vic. c. 55, which creates this new table of fees, does not repeal the statute 28 Eliz. c. 4, although it repealed the 23 Hen. c. 9, and parts of several other statutes. So that in truth they are at this moment in receipt of a double set of fees. I say a double set of fees, because it has been expressly held, that the poundage payable to the sheriff was to meet every expense incidental to the levying of a writ of execution. But another question arises out of this view of the case, and one which I think

requires the serious consideration of the under-sheriffs.

The statute 28 Eliz. c. 4, is certainly in no part of it repealed. It is still in full force and effect. It enacts "that it shall not be lawful to and for any sheriff, undersheriff, bailiff, &c. or either of their officers, &c. nor for any of them by reason or colour of their office, to receive or take of any person whatsoever, directly or indirectly, for the serving or executing of any extent or execution upon the body, lands, goods or chattels of any person whatsoever, more or other consideration or recompence than in this present act is and shall be limited and appointed, and which shall be lawful to be had, received, and taken: that is to say, 12d. of and for every 20s., when the sum exceedeth not 100l.; and 6d. of and for every 20s. being over and above the said sum of 100l." Then follows a penalty of treble damages, and a forfeiture of 40l. for every offence.

While this law is in existence, how can the sheriff venture to file a return in which he makes claim to his fees according to the table, as also his poundage. The first he contends are given him by the new statute, but this I submit cannot be the case, unless the 28 Eliz. c. 4, is repealed; and until it is repealed, the sheriff takes these additional fees at his peril; and if the penalties and forfeitures were enforced against him, the table of fees would be no defence to a *qui tam* action. If the 20th Elizabeth should be repealed, then the poundage would cease altogether, and the sheriff brought down to the standard of the table of fees, which I contend ought to be the case. Altogether the subject requires some alteration. Let the sheriff and his officers be paid, liberally paid, for what they actually do, but let not a commission or per centage be exacted, which cannot be identified or applied to any specific part of their official duty.

A COUNTRY ATTORNEY.

## QUESTIONS AT THE EXAMINATION.

*Michaelmas Term, 1839.*

### I. PRELIMINARY.

Where did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books you have read and studied.

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Within what time after service of a writ of summons, must the memorandum of service be indorsed? And what is the consequence of omitting such indorsement?

If the defendant keep out of the way to avoid personal service of a writ of summons, are there any, and what, means by which to compel an appearance?

Is a civil action maintainable in any case in which the cause of action constitutes an indictable offence?

Within what time after the date and issuing of a writ of summons must it be served? What is the meaning of an appearance *secundum statutum*?

In what cases must the declaration be filed, and in what cases delivered?

A defendant quits, and altogether gives up his place of residence, after service of the copy of a writ of summons, but before the plaintiff has declared. How do you proceed in the action?

State briefly the difference between a plea in bar, and in abatement.

What evidence is necessary for the plaintiff on the trial of an undefended action for goods sold and delivered, or on the execution of a writ of inquiry in the like action?

Does an issue in law conclude to the country? And what is meant by concluding to the country?

By what course of proceeding is secondary evidence made admissible?

What is meant by interlocutory proceedings?

Can the plaintiff issue a *fieri facias*, after a *capias ad satisfaciendum* has been executed?

How do you proceed to revive a judgment more than a year old?

When a defendant, having no personal interest in goods in his possession, is sued by two different claimants of such goods, has he any, and what relief at law?

### III. CONVEYANCING.

A. under a power appointed an estate to B. his heirs and assigns, to the use of C. his heirs and assigns. What estate did B. and C. take under the appointment?

A. conveyed his estate to B. his heirs and assigns, to the use of C. his heirs and assigns. What estate did B. and C. respectively take?

State the form of attestation of the execution of a deed, where it is executed by A. under a power of attorney from B.

What are the clauses usually introduced in a mortgage deed?

What constitutes an estate in tail general, and what special?

What is a remainder, and what are the different kinds?

- What is an executory devise?  
 What is a shifting use?  
 What is an estate in severalty?  
 What is the distinction between a joint-tenancy, and a tenancy by entireties?  
 Where infants are mortgagees, how and in what manner is the estate to be reconveyed?  
 What is the difference between taking an estate by descent and by purchase?  
 May a term created for raising portions, not assigned to attend, be at any time presumed to have become void, or to have been merged or surrendered? State instances.  
 Can a lessee for 999 years grant a lease for life? Give a reason for your answer.  
 If real estate be purchased out of partnership funds, is it treated as real or personal estate in any and what respects?
- IV. EQUITY AND PRACTICE OF THE COURTS.**
- Can a suit be maintained by a plaintiff, residing out of the jurisdiction of the Court?  
 Can a defendant set down a cause for hearing?  
 Can a defendant move to dismiss a bill filed for discovery only?  
 When is a defendant entitled to the carriage of a commission to examine witnesses?  
 What is the advantage of the prayer for general relief in a bill in Chancery?  
 What is the distinction between multifariousness and misjoinder as applied to bills in Chancery? and is there any and what difference in their consequences?  
 To a bill filed by a cestui que trust, is the trustee a necessary party?  
 What is the rule in equity as to the necessary parties to a suit, and how does it differ from the rule at law?  
 What effect has the overruling of a demurrer on the future defence of the party filing it?  
 Will equity relieve against acts performed under mistaken notions of law or of fact?  
 What is the general rule of equity in granting relief against breaches of covenant?  
 Does the Court impose any and what terms upon a plaintiff seeking to set aside an usurious contract?  
 What will amount to fraud in a purchaser in not apprising the vendor of any advantage of which the latter is ignorant?  
 To what amount of principal money, or of an annual payment, will the Court of Chancery pay to a married woman or her husband without order? and if the sum in Court exceed that amount, what is

- necessary to be done in order to obtain payment thereof?  
 State the distinction between legal and equitable assets, and the difference in the mode of their administration in payment of debts?
- V. BANKRUPTCY AND PRACTICE OF THE COURTS.**
- What is the lowest amount of debt which must be owing to a creditor, or two or more creditors, to found a fiat?  
 Are any and what members of parliament liable to the bankrupt laws?  
 If a member of Parliament is liable to the bankrupt laws, what proceedings must be taken to make such member a bankrupt?  
 Is any and what priority allowed to judgment creditors?  
 What is the course of proceeding in issuing and prosecuting a fiat up to the adjudication inclusive?  
 If a debtor liable to the bankrupt laws has not committed an act of bankruptcy, how can he be proceeded against in order to make him a bankrupt?  
 What is a scrivener within the contemplation of the bankrupt law?  
 What is the course of proceeding under a fiat, when there is an equitable mortgage by way of collateral security held by a creditor?  
 What is the effect of a proof of debt by a creditor who has the bankrupt in execution for the same debt?  
 In case the bankrupt shall have entered into an agreement for the purchase of any estate or interest in land, what course must the vendor pursue in order to obtain a performance of such agreement, or the possession of the property?  
 What contracts made at any and what time before the fiat, but after the act of bankruptcy, are deemed valid?  
 What is the effect of a certificate with regard to the bankrupt's liabilities?  
 In what case is the future property of a certificated bankrupt applicable for the creditors under that commission?  
 Is a bankrupt's certificate a discharge of an annuity payable by him?  
 If one only of two partners be declared bankrupt, in whose name or names must actions be brought to recover debts due to the partnership?

**VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.**

- What is homicide, and what are its different kinds? Give examples of each.

- Can one or more magistrates take bail, in any, or either, and which of the cases?
- Can a person committed to prison by magistrates, or under a coroner's warrant, charged with either of these offences, be admitted to bail; and if so, by whom, and what are the proceedings necessary to be taken on the application of the party to be so admitted to bail?
- What offences are usually tried at the quarter sessions?
- After an indictment has been preferred, when must the prosecutor proceed to trial?
- Can an indictment in any, and what, inferior Court be removed to the Court of Queen's Bench; and if so, in what way?
- What jurisdiction does the Court of Queen's Bench possess over an order or conviction by justices of the peace, and what is the mode of proceeding?
- Is there any and what appeal against the finding of a coroner's jury, imposing a deodand, and fixing the value thereof; and what is the mode of proceeding?
- For what offences is leave given to file a criminal information, and what is the mode of application to obtain it?
- For what proceeding is a criminal information a substitute?
- Have all the Superior Courts at Westminster concurrent jurisdiction in granting rules for a criminal information, or is it confined to any, and which of them?
- What is the mode of proceeding to try the validity of an election to an office of public trust?
- In case of damage by persons riotously assembled, have magistrates any summary power to award compensation to the party sustaining such damage, and to any or what extent; or is a party left to his action at law?
- Upon an indictment for stealing any record, will, or original legal document, from its place of deposit, is it necessary to prove value or property in such document?
- Can a Queen's Counsel be retained to defend the accused in a criminal case; and if so, how?

number entitled to attend, was, however, no less than 130, but of these five were absent on the day of examination. The candidates took their seats, as usual, before ten, and some of them did not deliver in their papers till nearly six o'clock. It appears that the Examiners were engaged nearly the whole of two days in considering the answers, and ultimately felt themselves compelled to postpone fourteen cases, for want of a sufficient number of satisfactory answers to the questions.

Our readers will form their own opinions of the propriety of the questions, as we have been enabled to state them nearly verbatim. They do not on the whole appear to be more difficult than those put during several recent terms. The larger part of the postponements must, therefore, be ascribed to the want of sufficient preparation. No doubt some of the candidates laboured under the disadvantage of coming from offices where but little variety of practice prevails; but we observe that a large proportion of the questions are on the general principles or doctrines of the law, with which the student may become acquainted by diligent reading. Whilst for the sake of the individuals we regret the immediate result of this examination, we are persuaded that it will be ultimately beneficial, by exciting a greater degree of diligence and assiduity, on the part as well of the unsuccessful candidates as of those who have yet to make their first appearance.

We believe it was very generally expected that the leniency which was at first properly shewn, should not be continued beyond a reasonable period; and it being now nearly four years since the Rules were promulgated, we are not surprised to find, (especially considering the large number examined this Term) that the number of the deferred cases should be increased.

After lamenting with the unsuccessful, we must next turn to their fortunate companions. Amongst those who have passed, we understand that upwards of 40 answered a majority of the questions satisfactorily in all the five departments, and nearly the same number in four departments. We are happy to conclude, therefore, that the system is working well, and that instead of young men learning their profession after they have entered it, they now proceed to the performance of their important and responsible duties with a large stock of useful knowledge.

## RESULT OF THE MICHAELMAS TERM EXAMINATION.

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We are informed that a considerable number of the candidates who had given notice of examination for this term, did not leave their testimonials in due time. The

SELECTIONS  
FROM CORRESPONDENCE.

## MODE OF EXAMINATION.

*To the Editor of the Legal Observer.*

Sir,

I HAVE in my office a gentleman who intends soon to apply for admission as an attorney, and having on his account watched with some anxiety the questions proposed by the examiners, I cannot but think that many of them are not only beyond what is to be fairly expected from articled clerks, but would give much trouble to experienced practitioners with the aid of books for reference. As an instance I mention the question put in one of the late examinations, viz.: "Whether an infant can execute a Cognovit?" Being unable to give my clerk a satisfactory answer after referring to Bacon, Comyn, and Selwyn, I consulted some professional friends, and found them equally at a loss. Should you, or any of your numerous readers be enabled to give me a satisfactory answer or reference, I should feel much obliged.

AN OLD SUBSCRIBER.

## INTEREST OF MARRIED WOMEN.

3 &amp; 4 W. 4, c. 74.

Sir,

With regard to the point submitted by "Studiosus," p. 472, vol. 18, as to the acknowledgment required under this statute, to be made by a married woman disposing of any estate which she alone, or she and her husband in her right, may have in any lands of any tenure; I am inclined to favor an opinion that no acknowledgment is necessary in this case to enable the "daughter to raise a sum of money on an assignment of her interest under the will, in which security her husband joins."

By the statute, sec. 1, the word "estate" is to be construed to extend to an estate in equity as well as at law; "but the interest of the wife in the produce of the sale of the estate devised is not such an interest in the lands, either at law or in equity" "within the meaning of that section."

Interest at law must be taken to be a right to the enjoyment of the lands devised; and as to an estate in equity to include money directed to be laid out in the purchase of land—in equity considered as land—of which a fine could not be levied until "the investment was actually made."

The absolute estate here passes to the trustees, and the wife has no interest in the estate devised beyond the payment of her proportion of the purchase money

H. B.

## PASSING INTEREST OF MARRIED WOMEN, 3 &amp; 4 W. 4, c. 74.

Sir,

I think a brief examination of the doctrine of equity as regards its conversion of land into money, will prove that in the case put by your correspondent "Studiosus," p. 472, vol. 18, the married woman must acknowledge the deed.

The rule of the Courts of Equity is based

upon the maxim "that what is agreed or directed to be done shall be considered as done, and done at the time it is stipulated to be done." The difficulty suggested by your correspondent arises from his doubt whether the interest about to be mortgaged is a pecuniary one or a real one. It is to be observed (presuming the widow to be still alive) that the time when the testator directs the conversion to be made has not yet arrived; and I do not see how it is possible to deal with the interest as one pecuniary. In *Whytall v. Kay*, 2 M. & K. 765, the testator devised the rents of real estate to his wife for life, and directed a sale after her decease. Upon the subject of conversion it was argued by counsel that there was no conversion, the widow being alive, and the Master of the Rolls said, there is no conversion out and out, except where it is apparent that the testator's intention is that real estate shall be considered as personalty to all intents at *the time of his death*; and further on, "nothing can be considered to amount to a conversion out and out in a will, unless the intention of the testator is expressed in a will duly attested, that the produce of real estate shall be treated at his death as if it had the quality of personal estate *at that time*." I conceive that the children are non *cestuis que trust* of the land in remainder, for it should further be remembered that they may prevent a conversion by the trustees after the widow's death. *Pearson v. Lane*, 17 Ves. 104. The interest to be mortgaged is not personal either in fact or contemplation of equity, and must therefore be dealt with according to its nature.

J. B. W.

## INHERITANCE ACT.

Sir,

*A.* purchases lands and dies, leaving two daughters surviving him, without making any disposition of the same in his lifetime. One of the daughters dies, leaving one son, and the said property to descend on the person or persons who may be entitled under the late Inheritance Act, 3 & 4 W. 4, c. 106. Will this moiety of the lands to which *A.* died entitled, pass by the 2d section of the above act to the son entirely, or will it be divided, on the principle of *A.*'s being the last purchaser, between the son and surviving daughter in equal proportions?

Y. Z.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

FIAT IN BANKRUPTCY.—6 G. 4, c. 16, s. 6.—CONSTRUCTION OF.

An act of bankruptcy was committed the 5th of March. The fiat bore date the 4th of May next following, but was not delivered out of the Bankruptcy Office until the 6th of May: Held, that the fiat was sued out within two calendar months from the act of bankruptcy.

This was a petition of appeal by special

case from the Court of Review. The petitioner stated, among other things, that a fiat was issued against him on the petition of Frederick and Edmund Godsell, wine and spirit brokers, and that he had presented a petition to the Court of Review, praying that the fiat might be annulled with costs, but that Court dismissed the petition on the 11th of June last. The petitioner then got a special case settled by one of the Judges of the Court of Review, for the purpose of appealing to the Lord Chancellor. The special case stated that "this was the petition of the bankrupt to supersede a fiat issued against him. The act of bankruptcy was a declaration of insolvency duly filed, and inserted in the London Gazette, on the 5th of March last. The docket was struck on the 4th of May following, and the fiat bore date the same day. It was delivered on the 6th of May to the solicitor who struck the docket. The petitioner prayed that it might be superseded, on the ground that the fiat was not sued out within two calendar months next after the insertion of the declaration of insolvency in the Gazette, as required by the act 6 G. 4, c. 16, s. 6.<sup>a</sup> The Court of Review ordered and decreed that the petition be dismissed. The petitioner insists that the said order is erroneous in matter of law, and ought to be reversed." The petition of appeal prayed that that order be reversed and the fiat annulled.

*Mr. Swanston* and *Mr. Wigram*, for the appellant.—The question in this matter turned on the meaning of the words "issued" and "sued out," in the 6th section of the Bankruptcy Act. The "suing out of the commission," which was the obtaining of it, must, as well as the issuing of it, be within the two calendar months. But here the declaration of insolvency was advertised on the 5th of March, and the fiat bore date the 4th of May, but was not delivered to the party suing it out until the 6th of May. The issuing therefore of the fiat was not within the time required by the act.

*Mr. Bethell*, with whom was *Mr. Follett*, for the respondent.—The question was, whether the fiat was sued out within the period limited by the act. The 6th section required that the fiat or commission be "sued out" within two calendar months. But there was a distinction between the meaning of the words "issuing" and "suing out." There was no limit put to

"the issuing" of the fiat; the words limiting the time clearly applied to the "suing out" of the fiat. The creditor here did all he could do. The docket was struck within the due time. The date of the fiat was, as stated by the special case, within the time. The fiat was complete at the time of the date, for it is never dated until it has received the application of the Great Seal. *Wydown's case.*<sup>b</sup>

*Mr. Swanston* in reply.—It appeared from other sections of the act, 6 G. 4, c. 16, that there is a distinction between the date and issuing of the commission. The words "before the date and the issuing of the commission" occur twice in the 8<sup>th</sup> section. They could not mean the same thing. In *Wydown's case*, Lord *Eldon* said the issuing of the commission is performed by the application of the Great Seal and delivery of the commission to the party suing it out.<sup>c</sup> In *Wydown's case* evidence was admitted of a fraction of a day, to ascertain whether the act of bankruptcy was before the commission was issued, both being on the same day. Here the fiat was not delivered until the 6th of May—a full day beyond the two calendar months from the committing of the act of bankruptcy.

The *Lord Chancellor*.—The special case stated that the fiat bore date the 4th of May, the declaration of insolvency having been inserted in the Gazette on the 5th of March, and the question was whether the Great Seal was applied to the fiat the day of its date. There was nothing in the special case to raise a doubt that the fiat was complete on that day. The docket had been struck that day, the date was of that day, and it was to be presumed the Great Seal was applied to the fiat the same day. The creditor, therefore, did all that he could do within the time required. But it appeared that the fiat was not delivered out of the office till the 6th of May. But whether the fiat was in the hands of the creditor or in the Bankruptcy Office, the property of the bankrupt was bound by it from the moment the Great Seal had been applied to it. The petitioning creditor having done all that he could, why should he lose the benefit of the fiat, because it was not delivered out to him by the proper officer on the day the fiat was signed and sealed? The object of the act of parliament was that there should be a limit to the time within which a party was to take proceedings against the bankrupt in order to have the benefit of them. There appeared to be no doubt on the special case that the terms of the act were complied with, and that the petitioner was within time.

Petition dismissed.

*Mr. Bethell* asked for costs.

*Mr. Swanston* objected to the giving costs. This was the first time this question was raised.

The *Lord Chancellor*.—It is not usual to give costs against a bankrupt on appeal.

*Ex parte Rowe*, in the matter of *Rowe*.—At Westminster, Nov. 4th, 1839.

## Queen's Bench.

[Before the Four Judges.]

## GUARDIAN IN SOCAGE.

*Whoever enters on the land of an heir when the heir is under fourteen years of age, may be treated by the heir, at his election, either as guardian in socage or as a trespasser; and when the heir, becoming of full age, sues such person in ejectment, the Judge must, on the facts being found, direct the jury that such is the law, and cannot leave it to them to say in what character the person entering on the land of the heir did so enter.*

Ejectment to recover a house, garden, and orchard, situate at Bensington in Oxfordshire. The ejectment was brought in Easter Term, 1837.

This case was tried at Oxford, before Mr. Justice Williams, when a verdict was found for the defendant. It appeared at the trial that the father of the lessor of the plaintiff was seised of the property, and died in the house in the month of March 1816, and that the lessor of the plaintiff was born in the year 1804, and was therefore twelve years old when his father died. It was proved that on the death of the father, the widow, the defendant, who was the step-mother of the lessor of the plaintiff, had continued to live in the house and occupy the premises since her husband's death, and that for more than two years immediately after the father's death, the lessor had also lived there; but that about two years ago the defendant said that she claimed the property under her husband's will. It was contended, on the part of the lessor of the plaintiff, that if the heir so elected, he might treat the defendant as a guardian in socage, and that if he did so, the ejectment had been brought in time, being brought within twenty years, reckoning from the year 1818, when he became fourteen years of age, at which time a guardianship in socage ended. The learned Judge left it to the jury to say whether the defendant had kept the possession intending to keep it for the benefit of the heir, or whether she had intended to keep possession for her own benefit, and to his exclusion. The jury found the latter, and the learned Judge directed a verdict for the defendant.

Mr. Carrington applied for a new trial, on the ground that every one who enters on the land of an heir who is under the age of fourteen, may be charged as a guardian in socage, if the heir chooses to treat him as such, or may be treated as a trespasser; and further, that in this case, as the heir and the step-mother were both in the house at the same time, the law would adjudge the possession to be in the heir as being the person rightfully entitled to it. With respect to the first point, it appeared from Littleton's Tenures,<sup>a</sup> that a rightful guardian in socage was the next friend to the heir, to whom the inheritance could not descend as the nearest maternal heir,

if the estate came *ex parte paterna*, and vice versa, that person was the rightful guardian in socage. But Lord Coke said,<sup>b</sup> "if a stranger entereth into the lands of the infant within the age of fourteen and taketh the profits of the same, the infant may charge him as guardian in socage: and this doth well agree with the writ of account against a guardian in socage, for the words be, "Idem *B.* præfato, *A.* rationabilem compotum suum de exitibus provenientibus de terris et tenementis suis in *N.*, quo tenetur in socagio et quorum custodiam edem *B.*, habuit dum proed, *A.* infra statem ut dicitur." And true it is, that in law he hath the custody of the lands, and he is called *tutor alienus*, and the right guardian in socage *tutor proprius*; and it is no plea for him to deny that he is *prochein amy*, but he must answer to the taking of the profits, as Littleton saith. In Comyn's Digest<sup>c</sup> it is laid down, that "accompt lies for the heir at the age of fourteen years against his guardian in socage; so it lies against a stranger as guardian, who enters and receives the profits of the land of an infant during his nonage." It is, however, not essential that the person entering should enter with an intention of entering for the benefit of the heir, as it was laid down in Roll. Ab.<sup>d</sup> that if one entered on lands as guardian in chivalry where the lands were held in socage, the heir might maintain an action of account against him. A guardian in chivalry was entitled to take the profits of the lands to his own use, as clearly appeared from Littleton's Tenures, tit. Knight's Service,<sup>e</sup> and also by sect. 25 of same work, and in the case of *Mone v. Malhoni*,<sup>f</sup> and in another case,<sup>g</sup> the plaintiff sued the defendant in an action of assumpsit, seeking to charge him as guardian in socage; and the defendant in each case pleaded that the land was held of him in chivalry, and that he entered as guardian in chivalry; and the question in each of those cases was not whether the defendant entered for the benefit of the heir, but whether the land was held in socage or not. In the case of *Ireland v. Coulter*,<sup>h</sup> Popham and Clinch, J. J., say "that where one enters as guardian who is not guardian, the infant may have trespass against him, or he may charge him as guardian, thus shewing it to be in the election of the heir whether he will treat the party as a guardian or not. [Mr. Justice Patteson.—Have you adverted to the 13th section of the statute 3 & 4 W. 4, c. 27, which prevents the receipt of the profits of land by any relation from being taken to be the possession of the heir?] That section only applies to relations, and this defendant is no relation, but merely a step-mother. In the case of *Doe d. Barrett v. Keen*,<sup>i</sup> Lord Kenyon said, "nothing can be clearer than that an infant may consider whoever enters on his estate as entering to his

<sup>b</sup> 1 Inst. 89 b, and 90a.<sup>c</sup> Tit. Accompt, A 2.<sup>d</sup> 1 Roll. Ab. 117, line 50.     \* Sect. 103.<sup>e</sup> Year Book, 49 Edw. 3, 10.<sup>f</sup> Year Book, 10 Hen. 6, 7.<sup>g</sup> Cro. Eliz. 630.     <sup>i</sup> 7 T. R. 386.

use." With respect to the second proposition, that if two be in possession at the same time, the law will adjudge the possession to be in the one who takes the right; *Littleton* says,<sup>k</sup> "if *A.* of *B.* be seised of a mese., and *F.* of *G.* that no right hath to enter into the same mese. claiming the said mese. to hold to him and his heirs entiretie, into the said mese., but the same *A.* of *B.* is then continually abiding in the same mese.; in this case the possession of the freehold shall be always adjudged in *A.* of *B.* and not in *F.* of *G.*, because in such case where two be in one house or other tenements, and the one claimeth by one title, and the other by another title, the law shall adjudge him in possession that hath right to have the possession of the same tenements." So Lord Chief Justice *Hobart*, in delivering the judgment of the Court in the case of *Elvis v. The Archbishop of York*,<sup>l</sup> says, that "when two are in possession, the possession is judged in him that hath right; for he only possesseth, though the other be in possession too, and take away the trees, corn, or the like. Yet when the true owner is clearly put out and removed, then he hath no longer estate or possession, but right only, and hath no election to be in possession or not in possession." [Mr. Justice *Williams*.—Your argument is, that I should not have left this to the jury as matter of fact, but should have given them my direction on it as matter of law.] That is the argument. Instead of its being left to the jury, the plaintiff was entitled to have the Judge's direction to the jury in his favour, as matter of law.

*Lord Denman*.—Take a rule to shew cause.

*Doe on the demise of James Cozens v. Martha Cozens*, M. T. 1838. Q. B. F. J.

#### Queen's Bench Practice Court.

##### EXAMINATION OF ATTORNEY.—ADMISSION OF ATTORNEY.—SPECIAL CIRCUMSTANCES.

*Under special circumstances the Court will allow an articled clerk to be examined before the expiration of his five years' service.*

This was an application by *V. Lee* to allow a gentleman named *Twynam* to be examined before the expiration of his term of five years service. He was desirous of proceeding to New Brunswick to practise, and therefore he found himself compelled to make the present application. His articles would not expire before the 11th April, 1840, which was a few days before the commencement of Easter Term, it beginning on the 15th. If he was compelled to wait until Easter Term before he was examined, he could not be admitted until Trinity Term and this would be after the usual vessels for New Brunswick had departed, and the applicant must proceed there by another vessel, which could not arrive before the winter had set in. By being allowed to undergo his examination now, he would be enabled to be admitted in Easter Term.

<sup>k</sup> *Tenures*, s. 701.

<sup>l</sup> *Hob.* 322.

*Littledale*, J.—He may, I think, be examined under the particular circumstances, forthwith.

Application granted. *Ex parte Twynam*, M. T. 1839. Q. B. P. C.

##### WRIT OF INQUIRY.—SHERIFF.—ENLARGING TIME FOR RETURN OF WRIT.—LIBEL.—PARLIAMENTARY PRIVILEGE.

*The Court will not stay the execution of a writ of inquiry by the sheriff, on the ground that it is suggested that the sheriff may incur the consequences of a breach of privilege of the House of Commons.*

*Kennedy* applied for a rule to shew cause why the execution of the writ of inquiry in this case should not be stayed. The application was at the instance of the sheriff of Middlesex. It was an action of libel, brought by Mr. Stockdale against Mr. Hansard the bookseller. The libel was alleged by Mr. Stockdale to consist in a certain Report of a Parliamentary Committee published by Mr. Hansard. Mr. Hansard suffered judgment by default, and a writ of inquiry was issued to the sheriff. The libel in question had already been the subject of legal decision before the full Court, and it had been determined that the statement alleged to be a libel was not a protected publication, although it appeared in a Parliamentary Report. The House of Commons had, however, resolved that the enforcing that judgment would be a breach of privilege. The sheriff was therefore placed in a most perilous situation by the present course adopted by the plaintiff. If the sheriff refused to execute the writ, he was liable to an attachment for not executing it; if, on the other hand, he did execute it, he would incur the consequence of a breach of privilege of the House of Commons. In this state of difficult circumstances, the humble application of the sheriff was that the execution of the writ of inquiry might be postponed.

*Littledale*, J.—I am of opinion that there is no ground for interfering to stay the execution of the writ before the sheriff.

Rule refused.—*Stockdale v. Hansard*, M. T. 1839. Q. B. P. C.

#### Common Pleas.

##### ACTION OF LIBEL.—PLEA OF ALIEN.

*In an action of libel the plaintiff declared, alleging the publication of a libel upon him in his character of dragoman or interpreter to the English Ambassador at Constantinople; the defendant pleaded that the plaintiff was an alien born, and was resident at Constantinople, and that he had never been naturalized or admitted a denizen in this kingdom: Held ill, on general demurrer.*

This was an action brought against the defendant, as publisher of a newspaper, for the publication of a libel. The declaration con-

tained two counts. The first count stated that the Queen of this realm, and his late Majesty King William 4th, were, and had been at peace with the Government of Turkey, and had appointed Lord Ponsonby ambassador from Great Britain to that state; that five dragomans, or interpreters, were employed by Lord Ponsonby in the service of the British Government; that the office of dragoman or interpreter was one of great trust and confidence, as communications of delicacy and importance were frequently made through him from one Government to the other; that the plaintiff was one of the five dragomans so employed, and that the libel complained of had been published of and concerning him in his office and character of such dragoman. The second count alleged that the plaintiff was the chief acting dragoman in the employment of Lord Ponsonby and the British Government at Constantinople, and that the libel in question was published of and concerning him in his office and character of such chief dragoman. The defendant, besides other pleas, pleaded that the plaintiff, at the time of the committing of the alleged grievances in the declaration mentioned, was, and was still, an alien born out of this realm—to wit, at Constantinople, and that he was then, and had been since, and still was residing and living out of this kingdom and the territories thereunto belonging, and that he had never been domiciled or naturalized, or admitted a denizen in this kingdom, or any of the said territories, and had never owed any allegiance to the Sovereign of this country, or been subject to any of the laws of the kingdom of Great Britain and Ireland, or of any of its said territories; nor did he carry on any trade as a merchant with this country, or any of the territories belonging thereto. To this plea the plaintiff demurred.

*Smyth*, in support of the demurrer, contended that the plaintiff was fully entitled to obtain that remedy for the injury inflicted upon him, which he sought by this action; and that his right to maintain the suit was supported by the old authorities. Bro. Abr tit. Nonability, pl. 62; *ib.* tit. Denizen, pl. 10; Vin. Abr. tit. Alien, H. All established the principle that an alien born, living out of the kingdom, was not prevented from suing in an action personal; and as a plea of the nature of that put on the record in this case was always looked upon as odious, the Court would, unless direct authorities to the contrary should be produced, give the plaintiff the benefit of the general words used by the old writers, to whose books he had referred. In Com. Dig. tit. Alien, No. 6, it was laid down that an alien friend might maintain an action of slander, and from the case on which that proposition was maintained, and which was reported in Bulstrode, 134, it appeared that the authority was founded on a decision that a foreign merchant might have an action against a person for slandering him in his character of merchant, by saying that he was a bankrupt. The question of the party residing out of the

kingdom, however, was not material, because the only consequence of his being so resident abroad was, that of his being called upon to give security for costs. The authority of Chief Baron Comyn was not confined to traders, but he laid down the proposition generally; but surely if a merchant was entitled to such protection, the plaintiff, who held a confidential situation under the English embassy, had an equal right to recover for injuries done to him. The plea, however, even assuming that its effect might be a good answer, was here pleaded improperly. According to the authorities it was a plea in abatement, but being pleaded in bar, it was bad on general demurrer. Bac. Abr. tit. Alien, E.; Com. Dig. tit. Abatement, I.; Co. Litt. 129 b.; Gilbert's Hist. of the Com. Pleas, 206. The plea, besides, did not contain sufficient averments. The defendant was bound to exclude every circumstance under which the plaintiff might maintain his suit. *Casseres v. Bell*, 8 T. R. 166. There was here no allegation that the plaintiff was not in this country at the time of the commencement of the action. His place of residence, it was true, was alleged to be Constantinople, but that did not exclude the possibility of his having been in England. He also referred to *Fearn v. Ladd*, 2 W. Bl. 1326; *Fiat v. Young*, 2 Bos. & P. 72; *Augustein v. Vaughan*, 1 Bos. & P. 222; *Sharlock v. Delacour*, 10 East, 326.

*Platt and Humfrey*, in support of the plea.—None of the authorities cited applied to instances of the present description, but to cases only of merchant strangers, who it was admitted were entitled to sue. Their right to maintain actions was established by Magna Charta, cap. 30, and had been recognised by Co. 2d Inst. 57; the statutes *de mercatoribus*, 11 Edw. I, and 13 Edw. I; and by *Camden's case*, in 7 Co. Rep. p. 17. The plaintiff had done nothing to entitle him to claim the protection of the English Courts. There was nothing to shew that he had ever been in England, and he had no privity with the laws of our country. Allegiance and protection were mutual, but without owing the one, it was not in his power to claim the other. It was admitted that alien merchants might maintain suits for debts, but a distinction existed between actions of that character and those of the nature of the present. The old form of declaration in cases of this description was that the plaintiff was a "true and loyal subject" of the King, and although, if a foreigner came over here, he would be entitled to protection, yet otherwise he could claim no right to bring such an action as the present.

*Smyth*, in reply, was stopped by the Court. *Tindal*, C. J., said, that he was of opinion that the present action was maintainable, although brought by an alien not residing in this realm. With respect to real actions, it had always been held that no alien could sustain one, because he was disqualified by the law to hold land. But with respect to personal actions, it had been decided in this very Court so long ago as the 6th of Henry 4., in a case reported

in Dyer, p. 2, where an alien living in France brought a writ of *debit*, and the defendant demanded judgment if he was bound to answer, he (the plaintiff) being out of the King's dominions, that that fact furnished no plea. Now, that case in its generality of the subject comprehended the present. Then there was the case in Bulstrode, where an alien brought an action for scandalous words—namely, for saying of him that he was a bankrupt. It was answered that the plaintiff was an alien born, he being a stranger merchant, and residing out of the kingdom. Mr. Justice Williams thought the action would not lie; but the other three judges of the court held that it did, and that an alien friend might well maintain all actions personal, such as assault and battery, &c. So that in that case there was no distinction taken as to the injury having been inflicted upon him in his character of merchant. If the Court were to hold a contrary doctrine in this case, some of the consequences likely to flow from it were very striking; and it would present our laws in a very unfavourable light to strangers if they were to be told that they could obtain no redress for an injury inflicted on them in this country, and more especially when it was admitted, that if they came here even for one hour, they would obtain a right to sue.

*Bosanquet*, J., was of the same opinion. It was said by this plea that the plaintiff was under a personal disability: that he was an alien, and had never been in this country, and that therefore he could maintain no action here, protection and allegiance being mutual. Now it was clear, from the cases cited, that that proposition was not universally true; because it had been decided in one case that an alien merchant might maintain an action for slander, although not living in the King's dominions; and, in another, that a native of France might maintain an action of debt. It had been admitted that if he had come to this country, he would be entitled to protection. Now, if merely coming here for one hour, an alien would be entitled to maintain such an action, it would be strange indeed if the present plaintiff could not maintain it; for, what did the declaration state? That the plaintiff was in the confidential service of Lord Ponsonby and the British Government at the time, and that the libel was published of him in that character. If the courts of this country would not protect a party in that situation, he knew no case in which any person, not a natural-born subject of the realm, could expect protection.

*Colman*, J., said that he considered that it would be disgraceful to the laws of this country if the plaintiff could not maintain this action. As it stood on this record at present, the plaintiff was libelled by a person in this country; and it was said that because he was an alien he could maintain no action for it. But no authority was cited, not even a single *dictum* in support of that doctrine; whilst the case of the alien merchant showed the contrary. This was not the time of day when he for one would feel disposed to narrow the free intercourse which ought to subsist between friendly nations.

*Maule*, J., concurred.

Judgment for the plaintiff.—*Pianni v. Law-son*, M. T. 1839. C. P.

### Exchequer of Pleas.

#### RULE OF COURT.—JUDGMENT.—EXECUTION.—COSTS.

Where a judge's order for payment of costs is made a rule of court, execution may be issued on it at once, without application to the court.

*Knowles* applied under the 1 & 2 Vict. c. 110, s. 18, to make a Judge's order a rule of Court, and for leave to issue execution thereon. The order was for payment of certain costs. They had been taxed at the amount of 5*l.* 16*s.*, and this amount had been demanded of the party. The words of the section were, "all rules of court whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the effect of judgments &c., and the persons to whom such money, or costs, charges or expenses shall be payable, shall be deemed judgment creditors, within the meaning of this act."

*Parke*, B.—I think that the Judge's order should be made a rule of Court, but the application to obtain leave to issue execution on the rule is unnecessary. The party who has obtained the rule in his favour may at once, without any application, sue out the bailable execution to enforce it.

The other Barons concurred.

Rule refused.—*Wallis v. Sheffield*, M. T. 1839. Excheq.

### THE EDITOR'S LETTER BOX.

We believe our original statement as to Mr. Serjeant Wilde being appointed Solicitor General to be correct.

A correspondent asks whether an attorney is liable to serve as a jurymen on coroners' inquests. One of the coroners for Middlesex holds they are liable; but when he summoned our correspondent as a jurymen, he claimed the exemption as an attorney, which letter the coroner read in his court, but stated he considered attorneys liable, and here the matter rested. If, however, the coroner should not happen to have sufficient jurymen, he may, perhaps, exercise his power of fining them, unless the point be settled.

Some orders have been granted to receive applications *nunc pro tunc* for Re-admission the last day of Term. This is an inconvenient practice, as the names do not appear in the published Lists, and there may be no opportunity of bringing forward an intended opposition.

The List of Barristers called and Candidate passed this Term, will be given in our next Number.

# The Legal Observer.

SATURDAY, NOVEMBER 30, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE LAW RELATING TO THE QUEEN's MARRIAGE.

THE authority of the Sovereign of these realms is omnipotent in all matters in which it is not restricted by act of parliament. The King or Queen regnant,<sup>a</sup> may therefore marry any person he or she may please, not prohibited by any such act. It is, however, enacted in the first place by stat 12 & 13 W. 3, c. 2, that whosoever shall come to the possession of the Crown, shall join in the communion of the Church of England, as by law established ; and by the prior statute 1 W. & M., st. 2, c. 2, usually called the Act of Exclusion, that every person who shall marry a Papist, shall be excluded and for ever incapable to inherit, possess, or enjoy the Crown ; and that in such case the people shall be absolved from their allegiance, and the Crown shall descend to such persons, being Protestants, as would have inherited the same in case the person so marrying were naturally dead, the Crown in the words of Blackstone “being limited to such heirs only of the Princess Sophia as are Protestant members of the Church of England, and are married to none but Protestants.” The King or Queen therefore, may marry any person of the other sex not being a Papist, for we are not aware that the restriction extends to any other religion, or that the person so married need

be in the communion of the Church of England.

The marriage of our present gracious Sovereign is of considerable interest in a legal and constitutional point of view, with regard to the precise situation which her intended husband shall fill, and the rights, powers, and privileges which are to be given to him.

There are only two precedents in our history of a married Queen Regnant ; these are, the first Queen Mary and Queen Anne, (for the situation of the second Mary, the consort of William the Third, as a Queen, is anomalous, and need not here be considered), and we shall state what was done in both these cases.

In the instance of the first Mary, an act was passed in the third session of the first year of her reign, chap. 1, to declare (according to the title) that “the regal power of this realm is as full in the Queen's Majesty as ever it was in any of her noble ancestors,” it being enacted by s. 3, “that the royal power, and all the dignities of the same, shall be as well in a queen as a king”—an enactment certainly quite unnecessary. By chap. 2, of the same session, the articles of marriage between Philip Prince of Spain and the Queen are rehearsed and confirmed. And it was enacted that the Queen shall and may only as a sole Queen use and enjoy the crown and sovereignty over her dominions, in such large manner in all degrees, after the solemnization of the marriage as she now hath, without any right, claim, or demand to be given, come, or grow unto the said Prince as tenant by the courtesy of this realm, or by any other means. This is the substance of this statute, as printed in the ordinary editions of the statutes at large, but it may be observed that the following account of the act is given

<sup>a</sup> The Queen Dowager is prohibited from marrying without the consent of the Crown, “because the disparagement of the Queen shall give greater comfort and example to other ladies of estate, who are of the blood royal, more lightly to disparage themselves,” 6 Hen. 6, 2 Inst. 18; See Riley's Plac. Parl. 72; 1 Bla. Com. 224.

<sup>b</sup> 1 Bla. Com. 218.

in the first volume of the Parliamentary History..<sup>c</sup>

"In April 7th, 1554, a bill was brought into the Lords to confirm certain articles and agreements touching the marriage between the Queen and the Prince of Spain. It was read only once on that day, and committed to the Earl of Shrewsbury, the Bishops of Durham, &c.; on the 9th, the bill was read again—the next day it passed that House, and was sent down to the Commons, who returned it concluded on the 12th. The following is an abstract of the act by which this marriage was concluded. 1. That Philip should not advance any person to any public office or dignity in England, but such as were natives of the realm and the Queen's subjects; that he should admit a set number of English into his household, whom he should use respectfully, and not suffer them to be injured by foreigners. 'That he should not transport the Queen out of England, but at her entreaty; nor any of the issue begotten on her, but they should have their education in this realm, and should not be suffered, but upon necessity and good reasons, to go out of the same; nor then neither, but with the consent of the English. That the Queen deceasing without children, Philip should not make any claim to the kingdom, but should leave it freely to him to whom of right it should belong. That he should not change anything in the laws, either public or private, nor the immunities and customs of the realm, but should be forced by oath to keep and confirm them. That he should not transport any jewels, nor any part of the wardrobe, nor alienate any of the revenues of the Crown. That he should preserve our shipping, &c. in good repair and well-manned.' The marriage was afterwards solemnized on the 20th of July, and they were both proclaimed by these titles: 'Philip and Mary, by the grace of God, King and Queen of England, France, Naples, Jerusalem, and Ireland, Defenders of the Faith, Archduke of Austria, &c.' A new Parliament was summoned by writs in the foregoing style, and the statutes of this reign are called the acts of Philip and Mary, and legal proceedings ran in both names. Hume says<sup>d</sup> that though the Queen attempted to have the administration put into her husband's hands, she failed in all her endeavours, and could not so much as procure the parliament's consent to his coronation. Philip was,

however, nominally at any rate, King of England, and it is to be observed that at the time of his marriage, he was King in no other right. To grace the ceremony and promote the dignity of the match,<sup>e</sup> Charles V., his father, created him King of Naples, on its solemnization, but this was little more than a titular dignity. It was subsequent to his marriage, in the year 1555, that he became King of Spain, on the resignation of Charles the 5th.

In a work of some authority,<sup>f</sup> we find the following account of the constitutional nature of Philip's power: "Philip as King, had the honour, style, and kingly name, and so had the precedence; he had to do also with the jurisdiction, for by the articles of the marriage, he was to aid the Queen in her administration of the kingdom and maintenance of the laws; writs and commissions passed under his name. He also sat in Parliament, voted therein, and joined in the royal assent, and joined in the publication and execution of all laws; *to him also was allegiance due*,<sup>g</sup> and therefore the crime of treason was equally against his as the Queen's crown and dignity, saving that it was reserved to be as against him only during the time of coverture, (citing the stat. 1 & 2 Ph. & M. c. 10;) *and yet had the Queen left issue by him, it would have been a hard adventure for the lawyers to have given their opinion in that case, seeing the king had been guardian to his children during their minority.*" It is therefore difficult to say that Philip was the subject of Queen Mary. He may rather be treated as the partner of her throne. :

The second instance of a married Queen Regnant in our history was Queen Anne, who married George, Prince of Denmark. This Sovereign was married many years before she came to the throne. Her husband was, soon after the marriage, created Duke of Cumberland, and took some part in politics, as a Peer of Parliament, in the reign of William the Third. Thus we find him, in 1692, among those who entered a protest in the journals of the House of Lords against the rejection of a popular bill<sup>h</sup> of the time. The first exercise of Queen Anne's power on her coming to the throne was the nomination of the

<sup>c</sup> Lingard, Vol. 7, p. 238.

<sup>d</sup> N. Bacon on Government of England, (1651) 2d part, p. 275. This work is highly praised by the Earl of Chatham, in his Letters to his nephew.

<sup>e</sup> This seems very doubtful, see post, p. 66.

<sup>h</sup> Smollett, Vol. 1, 181.

Prince her husband to the offices of Generalissimo and Lord High Admiral. Being regarded only as a subject, however, he still continued to occupy a seat in the House of Peers, in the quality of Duke of Cumberland.<sup>1</sup> In a subsequent period of the reign, having interfered in politics, he was threatened with parliamentary censure by one of the great contending parties in the state, which probably would have fallen on him had he not soon afterwards died.<sup>2</sup> Prince George had never, at any time, any pretensions to any character but that of a subject. In Nov. 1702, a provision was made for his Highness, and the yearly sum of 100,000*l.* was settled on him, in case he should survive the Queen; "and this was seconded," says Burnet, "by those who knew how acceptable the motion would be to the Queen, though it was double of what any Queen of England ever had in jointure, so that it passed without opposition. The Prince was many years older than the Queen, and was troubled with an asthma, that every year had ill effects upon his health, and had brought him to great danger this winter; yet the Queen thought it became her, as a good wife, to have the act passed, in which she might be the more zealous, because it was not thought advisable to move for an act that should take Prince George into partnership of the regal dignity."<sup>3</sup>

It will be seen, therefore, that the circumstances relating to these two precedents differ very much from each other, and that the character and situation of King Philip were very different from those of Prince George. We humbly conceive, however, the constitutional doctrine to be, that by whatever name the consort of a Queen Regnant be called, he is only a subject, and has, as we conceive, no peculiar privileges. If he be created a Peer of Parliament, he would, of course, be privileged as such, or he may enjoy any rank or any station in the public service expressly conferred on him by the Sovereign; but, unless so conferred, he does not appear to have any recognized rights by the common law; such as the Queen Consort has, for instance. The present King of Belgium, on his marriage with the Princess Charlotte, may be considered as standing in nearly the same situation as the consort of a Queen. We believe he declined a peerage, and merely took the

rank in the table of precedence and in the army expressly conferred on him.

Blackstone,<sup>1</sup> alluding to the husband of a Queen Regnant, contents himself with the following passage: "The husband of a Queen Regnant, as Prince George of Denmark was to Queen Anne, is her subject, and may be guilty of high treason against her, but in the instance of conjugal infidelity he is not subjected to the same penal restrictions. For which the reason seems to be that if a Queen Consort is unfaithful to the royal bed, this may debase or bastardise the heirs to the Crown, but no such danger can be consequent on the infidelity of the husband to a Queen Regnant."

Lord Coke<sup>m</sup> is, however, more distinct than this. Discussing the Statute of Treasons, he says, "Le Roy, is to be understood of a King Regnant, and not of one that hath but the name of a King, or a nominative King, as it was resolved in the case of King Philip, who married Queen Mary, and was but a nominative King, for Queen Mary had the office and dignity of a King. And therefore an act was passed that to compass the death of King Philip, during his marriage with the Queen, was treason."

Hawkins<sup>n</sup> says on the Statute of Allegiance, 11 Hen. 7, chap. 1,—"A titular king, as the husband of a Queen Regnant, seems to be within the words, yet it is clearly not within the meaning of this law."

The same law is also most clearly laid down by Lord Hale. "The husband of a Queen Regnant is not a King within this law (the Statute of Treasons), for the queen still holds her sovereignty entirely as if she were sole. (*Vide* 1 Mary, cap. 2, sess. 3)."

We conceive, therefore, that we have now shewn the correct rule to be, that the husband of a Queen Regnant of England, by whatever name he be called, King or Prince, is a subject; that no allegiance is due to him; that no treason, without an express act of parliament for that purpose, can be committed towards him; and that, as it would seem, he has no acknowledged rank or privileges but what are expressly conferred on him.

<sup>1</sup> 1 Bla. Com. 224.

<sup>m</sup> 3 Inst. 6, 7, & 8.

<sup>n</sup> Hawk. P. C. Chap. 17, s. 20. Compare this with what Bacon says, as before cited

<sup>o</sup> Hale. P. C. 106.

<sup>1</sup> Coxe's Marlborough, Vol. 1, p. 107.

<sup>2</sup> Coxe's Marlborough, Vol. 2, pp. 599, 601.

<sup>3</sup> See Parl. Hist. Vol. 6, p. 56.

## NOTES ON EQUITY.

## MUNICIPAL CORPORATION ACT.

By the Municipal Corporation Act, 5 & 6 W. 4, c. 76, s. 97, the council elected under the act may call in question all purchases, sales, and leases, not made before the 5th of June, 1835; and if it shall appear to the council that there is ground for believing that any such purchase, sale, or lease, was made for no consideration, or an inadequate consideration, the council may within six months after the first election of councillors under the act, cause the value of the lands, tenements, and premises in question to be inquired of and found by a jury of twelve indifferent persons, who shall have full power to inquire into the whole transaction; and if the jury shall find that no consideration, or a consideration less than that which they shall have so found to be the value which ought to have been given shall have been collusively given, the party to such purchase, sale, or lease, shall have his option either to reconvey and restore the lands, &c. and to abandon the contract upon the receipt of the consideration, if any, which he shall have given for the same, or to give such additional consideration so found by the jury.

It has been held in the construction of this statute by Lord *Cottenham*, C., reversing the decision of Lord *Langdale*, M. R., that the Court of Chancery has authority under its general jurisdiction to interfere for the protection of property vested in the corporation of a borough named in the Municipal Corporation Act, on the ground of breach of trust committed or threatened after the passing of that act, although the time when the existing members of the governing body corporate of such borough are to go out of office may not have arrived. *Attorney General v. Mayor of Liverpool*, 1 Myl. & C. 171; reported at the Rolls under the name of *Attorney General v. Aspinall*, 12 L. J. 306. Sir *L. Shadwell*, V. C., adhering to the *Lord Chancellor's* opinion, has also held that a Court of Equity has jurisdiction to relieve against collusive alienation of corporate property, notwithstanding the remedy provided by the 97th section of the Municipal Corporation Act. The peculiar circumstances of the case need not be here adverted to; but we shall extract the principle of his Honor's judgment. The case is the *Attorney General v. Wilson*, 9 Sim. 30.

" It does not appear to me that the Municipal Corporation Act has destroyed the identity of the old corporations, but it has continued the existence of the old corporations, varying, however, the mode in which certain corporate officers are to be chosen. This, however, is to be observed, that, although the mode of choosing the officers is altered, the corporation, in law remaining the same, yet, the application of the funds belonging to corporations is varied. For the 92d section of the act, after directing the property of corporations to be applied to certain specified purposes, directs that the surplus (if any) shall be applied, under the direc-

tion of the council, for the public benefit of the inhabitants, and the improvement of the borough; so that there is a sort of public trust affixed upon that which, before the act was passed, was mere corporate property, capable of alienation according to the uncontrolled will and pleasure of the body corporate. The novelty which has been introduced by the act is two-fold; first, the funds of corporations are to be applied to public purposes; and, secondly, they are to be applied under the direction of the council. But it was said that they are not at liberty so to do, as the 97th section of the act has provided a new course of proceeding to be taken in cases where corporate property has been collusively alienated. But, after having frequently read over that section, the conclusion that I have come to is, that that section cannot be considered to have ousted this Court of its general jurisdiction to enforce a mere trust; and I should have come to that conclusion even if the matter had not been so decided as I think it has been. It is true that the act has, to a certain extent, changed the form of the remedy; for as corporate property is now applicable to public purposes, it may be right that, in all future instances, the Attorney General should sue in conjunction with the corporation. But for that circumstance, the corporation might have filed a bill against those individuals who have placed themselves in the situation of trustees, and thereby have compelled them to give an account of their trust, and to make restitution to the corporation of its own property. In my opinion it never could have been the intention of the legislature by this 97th section to oust this Court of its general jurisdiction, for it is to be observed, that the remedy is of an extremely minute and special nature; and moreover, it is to be exercised only within a limited time; because, it is enacted that it shall be lawful for the council, at any time within six calendar months next after the first election of councillors under the act shall have been declared, to summon a jury, in order that the matter complained of may be enquired into and rectified. Now it obviously might happen that the town council might not know the fact within the six months after the first election of councillors under the act; and it would be singular if an alienation of corporate property, however improper, should go unredressed, merely because the town council had not that information which would enable them to take proceedings for defeating it within the very limited time prescribed by the act. I cannot think that such was the intention of the legislature. And the latter part of the section throws light upon the question; for the power that is given to his Majesty in council to order that in certain cases improper alienation of corporate property shall not be called in question, is not a general power to his Majesty in council to order that those alienations shall not be called in question at all, but only to order that they shall not be called in question under the provisions of that act. The meaning of the legislature was that the power of the King in council

should be limited to that which is mentioned in the antecedent part of the section, namely, to the proceedings which should be taken under the provisions of the act; and the restrictive words which are there found were meant to be confined to that new mode of proceeding provided by the section itself, and which was to take place in a given form. If before the passing of the act now under consideration, this Court had a right to interfere at the instance of corporations suing as *cestuis que trahit* to protect their property in the hands of their trustees, there are, in my opinion, no restrictive words in the act, to destroy that antecedent right; but there is only a cumulative right given, in a particular form, to set aside certain alienations of corporate property that might be discovered by the town council within a very limited time."

### 'THE NEW SOLICITOR GENERAL.'

Mr. SERJEANT WILDE has been appointed Solicitor General. It will be remembered that we have stated from the first that we believed this appointment would be made in the event of Sir R. Rolfe's being promoted to the Bench. We do not find that the new Baron has as yet sat in Equity. This is a favourite side of the Court both with Lord Abinger and Mr. Baron Alderson, and we are not sure that they will resign it.

The rights of the Serjeants are still in suspense. On the last day of Michaelmas Term, Chief Justice Tindal informed the Bar that on the first day of next Term, or as soon after as was convenient, he should call on some gentleman of the coif to move, passing over some other gentleman not of that degree, who might then shew cause why he should be heard. The intention of this is obviously to enable the Court to hear both sides of the question. So far the argument has been entirely on one side—a *unilateral* case—both in the Privy Council and in the Common Pleas, with the exception of a most able and amusing speech, as we understand, from the Attorney General in the Privy Council. It will now be for the profession at large to select a champion of their general privileges, as against the monopoly of the learned "band of brothers." We shall see whether the new Solicitor General will throw the weight of his official station into the Serjeants' scale. If he should, which we much doubt, and the Attorney General were heard for the Bar generally, it would be rather a curious and unusual contest. We would, however humbly, recommend new counsel on both sides, and as Sir William Fol-

lett is once more in the lists, we would fearlessly commit, what we conscientiously believe to be the right side, to his guidance. Let the Serjeants then do their best.

### CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

#### No. XV.

##### LETTERS PATENT FOR INVENTIONS.

2 & 3 Vict., c. 67.

*An act to amend an act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching Letters Patent for Inventions."* [24th August 1839.]

5 & 6 W. 4, c. 83. *Repealing provisions requiring the application by petition to be prosecuted with effect before the expiration of the term of the patent.*—Whereas by an act passed in the fifth and sixth years of the reign of his Majesty King William the Fourth, intituled "An Act to amend the Law touching Letters Patent for Inventions," it is amongst other things enacted, that if any person having obtained any letters patent as therein mentioned shall give notice as thereby required of his intention to apply to his Majesty in council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter a caveat at the council office, and if his Majesty shall refer the consideration of such petition to the judicial committee of the privy council, and notice shall be first given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses, whereupon, and upon hearing and inquiry of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent shall be granted, not exceeding seven years, and his Majesty is thereby authorized and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary notwithstanding; provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent: And whereas it has happened since the passing of the said act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting

with effect their application before the judicial committee of the privy council; and it is expedient therefore that the said judicial committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited act as provides that no extension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed.

*2. Term of patent right may be extended in certain cases, though the application for such extension not prosecuted with effect before the expiration thereof.*—And be it further enacted that it shall be lawful for the judicial committee of the privy council, in all cases where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application, and to report thereon as by the said recited act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for her Majesty, if she shall think fit, on the report of the said judicial committee recommending an extension of the term of such letters patent to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: provided always, that no such extension or new letters patent shall be granted if a petition for the same shall not have been presented as by the said recited act directed before the expiration of the term sought to be extended, nor in case of petitions presented after the thirtieth day of November one thousand eight hundred and thirty nine, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient reason shall be shown to the satisfaction of the said judicial committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

*3. Act may be amended this session.*—And be further enacted, that this act may be altered, amended, or repealed by any act to be passed in the present session.

## PRE-PAYMENT OF THE PENNY POSTAGE.

THERE is an important difference to be observed in regard to the pre-payment of postage between General Post letters and letters within the London District. The four-penny postage for General Post letters if not pre-paid, is not increased on delivery; but in the London district, if the penny postage be not pre-paid, the old postage of two-pence within, and three-pence beyond three miles, must be paid on delivery.

The weight of a General Post letter or packet may extend to sixteen ounces, chargeable at the rate of four-pence each half-ounce; but the letters in the London district must not exceed four ounces, unless intended for the General Post.

To prevent mistake the following particulars are extracted from the London Gazette of the 22nd inst:

### *Inland Letters.*

On all letters not by law specially exempted from postage, and not exceeding half an ounce in weight, transmitted by the General Post between places within the United Kingdom or between the said islands,<sup>a</sup> or between the United Kingdom and the said islands, (not being letters sent to or from parts beyond the seas) there shall be charged and taken one uniform rate of postage of *four-pence*, without reference to the number of sheets or pieces of paper, or inclosures, of which the same may be comprised, or to the distance or number of miles the same shall be conveyed.

On all such letters, if exceeding half an ounce in weight, there shall be charged and taken progressive and additional rates of postage, (each additional rate being estimated at four pence) according to the scale of weight, and number of rates hereinbefore fixed and declared: [that is, four-pence for each half ounce.]

### *London District.*

That on all letters not exceeding half an ounce in weight, and not being by law specially exempted from the two-penny and penny post rates, transmitted by any two-penny or penny post in London or Dublin, (and not having passed through, or being intended to pass through the General Post) there shall, on and after the said fifth day of December next, be charged and taken a rate of one penny only, provided such postage be pre-paid at the time of posting the same. But in case any letter, not being by law specially exempted as aforesaid, transmitted by any such two-penny or penny post, shall not be pre-paid when posted, or shall exceed half an ounce in weight, there shall be taken the same rate of postage as is now payable by law thereon,

<sup>a</sup> Jersey, Guernsey, Alderney, Sark and Man.

That no letter shall be sent by any such two-penny or penny post exceeding four ounces in weight, unless the same shall have originally passed, or shall be intended to pass, through the General Post; and in such last mentioned case, not exceeding the weight of sixteen ounces, unless specially authorised by this warrant as aforesaid.

## CHANCERY COMMISSIONERS UNDER AGE.

We are informed that a practice prevails to some extent, which is evidently objectionable, that of appointing articled clerks, who are under age, as commissioners for taking answers in the Court of Chancery. In that Court, it will be recollect'd, that the mode of administering an oath is deemed of considerable importance. One of the Masters personally attends daily at the public office, and the deponent is brought before him and takes the oath in his presence. In the Common Law Courts the oath is administered by the Judge's Clerk in an adjoining room, and we hear that it is in contemplation to suggest to the Judges that one of the fifteen Common Law Masters should attend, after the manner in Chancery, during the usual hours of business. This would be very convenient to the practitioners, and relieve the Judges' chambers of a considerable part of the crowd gathered there during the few hours of the Judge's attendance. Seeing the solemnity with which oaths are administered in London by one of the Masters of the Court of Chancery, it is manifestly improper that young gentlemen under age, (however respectable and intelligent), should be deputed to act as commissioners in the country.

The practice having been brought to the notice of the committee of the Incorporated Law Society, they submitted the subject to the Master of the Rolls, and his Lordship has directed that any case in which the abuse occurs be brought regularly before the Court. The solicitors who send in the names to the six clerks office, should be careful to ascertain that the commissioners they name are of full age. It appears that the clerks in Court rely entirely on the solicitors for the fitness of the parties proposed; and we have deemed it expedient to notice the subject, in order that solicitors may avoid the delay and expence of having their proceedings set aside. It may be kindly intended by a solicitor to name his articled clerk for this duty, but it is clear that until of age he cannot properly perform it.

## MODE OF EXAMINING ARTICLED CLERKS.

To the Editor of the Legal Observer.

Sir,

AFTER having read with some degree of interest (being under articles) the observations

and discussions upon the examination and mode of conducting it, that have appeared in your columns from your numerous subscribers and correspondents, I was somewhat amused at the communication that appears in your number for 23d Nov., from "An old Subscriber," in which, after a dolorous preface, to the effect that the questions cannot be expected to be answered by articled clerks, but would confound experienced practitioners themselves, with the aid of books for reference, the following *abstruse* question is given, *exempli gratiā*, "Whether an infant can execute a cognovit." By way of satisfactorily answering the question, I would remind him, that it is a broad principle of our law that in general an infant can do no legal act, nor make a deed, nor any manner of contract that will bind him. I say in general, for there are exceptions to the rule, (as where acts of parliament enable him, &c.) and he will find it laid down in Bacon's Abridgment,—although he says that he can find no answer by referring to Bacon,—that "infants are regularly allowed to rescind and break through all contracts *in pais* made during minority, except only for schooling and necessaries, be they never so much to their advantage;" and to come quite to the point, if he look into Chitty's Archbold, he will find with respect to warrants of attorney, as well as cognovits, that "if a warrant of attorney be given by an infant, the Court will order it to be delivered up to be cancelled, even although there may be circumstances of fraud on the part of the infant, on his clearly shewing that he was under age when he gave the warrant."

With respect to the observations of your "Old Subscriber," I certainly agree with him that there are many old practitioners who would be sadly puzzled at an examination; but that is no reason, I think, why the "rising generation" of attorneys should not be made to acquire some sound knowledge of legal principles, and (to use your own words) "proceed to the performance of their important and responsible duties with a large stock of useful knowledge," and so remove a stigma which has been partially thrown upon our profession, that many of its members are anything but lawyers. I have not myself met with any one who thinks that the ordeal is at all too "fiery;" and I am sure you will agree with me when I assert that a moderate application, during the five years which an articled clerk passes in his master's office, will enable him to go through it with credit.

A. E. F.

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Sir,

Observing in your number of last week a letter from "An old Subscriber," I cannot but regret that any one, particularly a *professional man*, should remark unfairness in the questions at the examination of attorneys: it is not by adducing *one* or *two* instances that such a remark is to be borne out. Let the questions from the commencement of the examinations to the present time, or those of any

particular term be perused, and I am convinced that there will be *indeed few* to advocate more lenity; while the greater proportion will see the necessity of *additional strictness*. The Examiners have but a troublesome and thankless office in discharging the duties imposed on them; it therefore little behoves their professional brethren to indulge in remarks, and "make mountains," when there can be no occasion, particularly when the extreme courtesy of the examiners (which every one who has been before them must testify), is remembered.

JUSTITIA.

SALOMONS' CASE,  
9 GEO. 4, c. 17.

The following is the judgment of Lord Chief Justice *Tindal*.—

In this case the Court of Queen's Bench gave judgment in favour of the Crown upon a *quo warranto* information filed against the defendant for exercising the office of alderman of the ward of Aldgate, in the City of London. The pleadings raise the question on demurrer, whether, at the time of issuing the precept by virtue of which the defendant below was elected alderman, the office was void, by reason of Mr. Salomons, who had been elected alderman of that ward, upon a vacancy by death, having neglected to comply with the provisions of the 9 G. 4, c. 17, s. 2.

Mr. Salomons had not made and subscribed the declaration required by that act, before he tendered himself to the Court of Mayor and Aldermen for admission into the office of alderman; and upon his so tendering himself, as it is averred in the plea. "the said David Salomons was then and there requested by the said Court of Mayor and Aldermen to make and subscribe in their presence the said declaration in the said act mentioned, but the said David Salomons did not nor would, at the said Court of Mayor and Aldermen so holden as last aforesaid, nor at any time within one calendar month next before or upon his admission into the said office of alderman, nor at any other time whatsoever, make and subscribe the said declaration, but wholly omitted and neglected so to do."

The replication does not traverse this omission and neglect, but states the special circumstances, viz., that within the space of one month next after the day of his election he presented himself to the Court of Mayor and Aldermen, and demanded and made claim to be admitted, and that the Court demanded of him whether he had signed the declaration required by the said act, within the space of one month next before his then application for admission, to which he answered that he had not; "whereupon the Court demanded of him whether he would make and subscribe the said declaration; whereupon the said David Salomons declined to say whether he would or not,

but required the said Court to admit him to the said office, which the said Court then and there, and within the space of one month from the election of the said David Salomons to the said office of alderman, positively refused to do; and the said Court then and there declared the election of the said David Salomons to the said office to be null and void."

Upon this state of the pleadings the Court is bound to assume that he omitted to make and subscribe the declaration at the time when the Court required him to do so, because the allegation in the plea that he did so omit and neglect is not traversed, and it is expressly alleged in the replication that he would not say whether he would do so or not after he should be admitted; and the question therefore becomes this, whether, by reason of such omission and neglect, Mr. Salomons's election became void; and that question depends upon the construction which must be put upon the act of parliament, as to the time at which the declaration required by the statute must be subscribed and made. The 9 G. 4, c. 17, after referring in the first section to the acts usually called the corporation and test acts, and reciting the expediency of repealing so much of them as imposes the necessity of taking the sacrament of the Lord's Supper according to the rites or usages of the Church of England, proceeds to repeal such parts of the said acts. The second section, after reciting that the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline, and government thereof, and the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, are by the laws of this realm severally established permanently and irrevocably, and that it was just and fitting, on the repeal of such parts of the said acts as impose the necessity of taking the sacrament as a qualification for office, a declaration, which is afterwards set forth, should be substituted in lieu thereof, proceeds to enact, that every person who shall hereafter be placed, elected, or chosen in or to the office of mayor, alderman, &c., or in or to any office of magistracy, or place, trust, or employment relating to the government of any city &c., within England or Wales or the town of Berwick upon Tweed, shall within one calendar month next before or upon his admission into any of the aforesaid offices or trusts, make and subscribe the declaration therein set forth.

The third section specifies in the presence of what persons the said declaration shall be made and subscribed; and the fourth enacts that "if any person, placed, elected, or chosen into any of the aforesaid offices or places, shall omit or neglect to make and subscribe the said declaration in manner above mentioned, such placing, election, or choice shall be void, and that it shall not be lawful for such person to do any act in the execution of the office or place into which he shall be so chosen, elected, or placed." It is clear from these recitals and provisions that the legislature meant to open as well corporate offices as places in the gift and appointment of the Crown to every person

professing the Christian faith, instead of concerning them, as before had been the case, to those only who were willing to take the sacramental test; but it is equally clear, that it intended that no one should exercise such an office unless he made and subscribed at the proper time the declaration which is substituted instead of such sacramental test; and the only difficulty which is raised upon this record is, whether the proper time had arrived for holding the election of Mr. Salomons to be void, when he was required by the Court of Mayor and Aldermen to make and subscribe the declaration prescribed by the act, and when he omitted and neglected so to do.

And we are all of opinion that, upon the proper construction of the act, such time had then arrived, and that the non-compliance of Mr. Salomons with such requisition of the court, made his election to the office of alderman, *ipso facto* void.

Upon two points which have been made in the course of the argument on the part of the Crown, we have entertained no doubt. We think it clear that the statute did not intend, by the second section to give the period of one entire month to the person elected, within which he might decide whether he would make the declaration or not; and that the objection that one month had not elapsed, in this case, between the election of Mr. Salomons and the application to be admitted, is entirely without foundation. The statute never could anticipate that any one would offer himself as a candidate for the office who had not already made up his mind to subscribe the declaration imposed by law. The whole object of that part of the provision contained in the second section is, that if, at the time of being admitted, the person elected has made the declaration so recently as within one month next before (but not at an anterior period), such making of the declaration shall be sufficient, and he cannot be called upon to make it again. Neither have we any doubt upon another point which was raised in the course of the argument, namely, that the legislature did not intend to give to the person elected a reasonable time after admission for the purpose of making the declaration, for these are not the words of the act; nor could the legislature have ever contemplated that the propriety of making or not making the declaration was a subject requiring any time for consideration. The words of the act, "upon his admission," do not, as it appears to us, mean after the admission has taken place, but upon the occasion of, or at the time of his admission. Those words shew the intention of the legislature to have been that a space of time commencing at one calendar month before, and terminating with the act of admission, should be the limit or period within which the declaration should be made; so that, if made at an earlier time, the latest opportunity of making it would be the same time and place at which the oath of office was administered, and before the same persons. In effect, the making of the declaration does, by virtue of those words, form a part of the act of admission, and is an

essential requisite to the being permitted to exercise the corporate office. And we hold it, therefore, to be unnecessary to refer to instances of the legal meaning of the word "upon," which, in different cases, may undoubtedly either mean before the act done to which it relates, or simultaneously with the act done, or after the act done, according as reason and good sense require the interpretation, with reference to the context and subject-matter. And consequently, if, immediately after having been admitted, in the same way as if this act had not been passed, Mr. Salomons had omitted and neglected to make the declaration, his election would unquestionably have been void, and it would have become the duty of the Court of Mayor and Aldermen to have forthwith issued a precept for a new election.

But the point upon which the doubt, and the only doubt, in this case has arisen in our minds is, whether, upon the perusing of the act, the election became void by the mere offer of the party elected to be admitted, at the proper time when he ought to have been admitted, and by his omission or neglect at that time to make and subscribe the declaration required, or whether, as no admission had actually taken place in the old corporate form, that is, by taking the oath of office, the occasion had arisen upon which he was bound to make the declaration, and the Court had the power to declare the election to be void.

It seems, however, to us, that the more reasonable construction of the act, and that which will best effectuate the intentions of the legislature, is, that if the person elected (not having qualified within the preceding month by making the declaration) be not ready, and, much more, if he decline to say whether he will or not make and subscribe the declaration, as well as take the corporate oaths at the time and place where his admission ought to take place, according to the charter, bye-law, or usage of the corporation, no complete or valid admission can take place at all; his admission could be at most but an idle form, since he cannot be permitted, under section 4th, "to do any act in the execution of his office," and that his election thereby becomes void. The declaration comes in lieu of the sacramental test, which, in the case of corporate offices, must have been taken not only before the admission, but even the election of the party: it is a test of the required qualification for the office, both as indicating the religious faith of the party, and furnishing a security, by his solemn promise, against any injury to the Protestant Church and its establishment. And as the precise order in which each part of the act of admission is to take place is not defined by the statute, it is reasonable to hold, where there is any doubt as to which should precede the other, that the Court of Mayor and Alderman, being the proper Court to give the admission, may prescribe the order in which the respective parts of the admission shall be arranged; that they may first ascertain the qualification before they administer the oath of office, instead of adopting

the course which might be useless, and which, if useless, would be improper, and might even lead to inconvenience, that of first administering the oath, and afterwards ascertaining the qualification. There is no reason, therefore, why the admission, by administering the corporate oath of office, should first take place, before the statutory declaration is made; but the contrary, as thereby this great inconvenience would follow, that the time during which the corporation remains without an officer must be unnecessarily extended. And we think this construction is consistent with the words of the statute. The second section is framed upon the supposition that the party elected will be completely admitted; and requires that he make the declaration either within a given time before or at the time, and on the occasion of his admission, superadding new requisites to the old corporate form of admission. It is the fourth section which provides for the consequences of an omission or neglect to make that declaration. It enacts, that if the person elected shall omit or neglect to make and subscribe the said declaration in manner above mentioned, such placing, election, or choice, shall be void. The question, therefore, upon the words of this section is, what is the proper meaning of the general words of reference, "in manner above mentioned?" and coupling those words with the context, we think we are not bound to say that they mean, at the time when a corporate admission has been actually completed, when it is clear, from the context, that an actual admission cannot be an available admission unless the declaration is made; and thus the person elected cannot, without such declaration made, exercise any corporate functions. It is also not unworthy of observation, that the words of the fourth section do not in terms provide that the admission shall be void, but the election only, (for the word "placing" has no reference to admission, but only to appointment or title by any other mode than election or choice), and it cannot be presumed that if an actual admission had been contemplated, the legislature would not have declared such omission to be void by the refusal or omission to make the declaration.

Upon the whole, therefore, we hold the meaning of the statute to be, that it makes void the election if the person elected (not having previously qualified within a calendar month), should omit or neglect to qualify himself by making the declaration at the time and occasion when he ought to be admitted; and that the useless form of a corporate admission is not necessary before the party can be called on to qualify according to the statute, and before the election can be declared void.

We therefore think that the judgment of the Court of Queen's Bench ought to be reversed.

*The Queen v. Humphery, Esq., T. T. 1839.*

## SELECTIONS FROM CORRESPONDENCE.

### INTEREST OF MARRIED WOMEN.

*To the Editor of the Legal Observer.*

Sir,

I HAVE read the answer of H. B. and J. B. W. in your publication of 23d instant to the letter of "Studiosus."

The question of acknowledgment has *really* nothing to do with the matter. The lady (who is married) is desirous of charging her vested reversionary interest in the money to arise by sale of certain real estates. Which sale is not to take place until after the death of a tenant for life. The great case of *Purdew and Jackson*, 1 Russ. l, here applies. The lady, being a *feme covert*, cannot charge her reversionary interest in choses in action, so as to bind herself in the event of her surviving her husband, nor her representatives if her husband survive and do not administer. Had the lady been entitled to the land itself after the decease of the tenant for life, she would by deed duly acknowledged, charge the same in any way she pleased,—her husband of course joining.

2

### MORTGAGE STAMPS.

Mr. Editor,

My attention has just been drawn to a note of the case of *Lant v. Peace*, 3 Nev. & P. 329, cited in the last edition of Jarman's Conveyancing, vol. 5, p. 541, and wherein it is said to have been decided, that a deed operating as a further security for a sum on which the *ad valorem* duty had been paid, and also as a security for an additional sum, required a deed stamp in addition to the *ad valorem* stamp on the further sum.

Is that a correct decision? I submit not, for this reason, that a common deed stamp is imposed only in cases of deeds not otherwise charged in the schedule to 55 G. 3, c. 184, nor expressly exempted; and that as the deed in question was otherwise charged, namely, with the *ad valorem* duty, a common deed stamp was not necessary.

A COUNTRY BARRISTER.

### SUPERIOR COURTS.

#### Vice Chancellor's Court.

#### CUSTODY OF INFANTS ACT.

Mr. Knight Bruce renewed his application for an order to substitute service of the petition on Mr. T.'s solicitor, or at his place of business in London. The application had been suspended on the former day, the wife's friends having then entertained hopes that another attempt to communicate with Mr. T. by letter would prove successful. That attempt was made, and a letter was written to him on the

8th instant respecting the wife's conviction of her error in imputing misconduct to him, and withdrawing the imputation. That letter was sent open to his solicitors, and copies of it were addressed to Mr. T. himself at his private house in the country, and house of business in town; but no notice having been taken of it, the application to substitute service on the solicitors became necessary.

Further affidavits in support of the application were produced.

The Vice Chancellor was of opinion that a sufficient case was made out by these affidavits, together with those which were filed on a former day, previous to the first application, to warrant the Court to make the order for substituting service of the petition.

*Ex parte Mrs. T., in re the Custody of Infants Act.*—November 21st, 1839.

### Rolls.

#### MARRIED WOMAN.—SEPARATE ESTATE.—PRIORITY OF MORTGAGE.

*A married woman having property settled to her separate use, agreed to mortgage it to A., to secure payment of a loan; she becomes discovert and mortgages the property to B. to secure payment of a loan from him. B. had notice of A.'s claim. Held, that A. was entitled to a prior mortgage.*

The bill was filed by John Stead against Stephen Nelson, and Julia his wife, and John Tolson, claiming a right to have a mortgage upon the settled property of Mrs. Nelson to secure a debt of 120*l.* and to have a priority over a mortgage, executed over the same property to the defendant John Tolson. It appeared that in the year 1831, Miss Julia Booth (now Mrs. Nelson,) married Joseph Waterworth, and by a deed of settlement executed in contemplation of the marriage, certain lands were conveyed to trustees, upon trust to the use of the lady for life for her separate use, or to the use of such persons as she should by writing during her coverture direct and appoint; and in default of such direction and appointment, in trust to pay the rents into her own hands for life, for her separate use independent of her husband. In September 1835 Mr. and Mrs. Waterworth borrowed 120*l.* from the plaintiff, for which they gave their joint promissory note, and signed an agreement that they and the survivor of them would, when required by the plaintiff, convey the said lands to him by way of mortgage to secure the 120*l.* Mr. Waterworth died in October 1836 insolvent, and the plaintiff applied to his widow for payment of the 120*l.* which she promised. In February 1837, the defendant Tolson lent her 40*l.* upon mortgage of her said settled property, but the plaintiff being apprised of the proceeding gave notice of his claim to Tolson before the mortgage was completed. Mrs. Waterworth afterwards married the defendant Nelson.

Mr. Pemberton and Mr. K. Parker, for the plaintiff, contended that he was entitled to be paid his debt with interest, or to have the first

mortgage on the property, pursuant to the agreement which Mrs. Nelson and her former husband entered into. She had then a full right over the property.

Mr. Kindersley and Mr. Metcalfe insisted that the lady had not, during the first overtum, absolute power over the property.

Lord Langdale, M. R. said, this was a case where the defendant Tolson advanced money after the notice of the plaintiff's claim. It was therefore, no hardship upon him that he should be postponed to the plaintiff. He was attempting to throw a hardship on the plaintiff. The settled estate was vested in Mrs. Waterworth for her life, for "her separate use." If it were a legal estate, a court of law would take no notice of the words "for her separate use;" but a court of equity gave her the same right over it as if she had been a *feme sole*; and she for a loan of 120*l.* had agreed to execute a mortgage of her estate. A life estate was vested in her; that estate might be prolonged beyond the life of her husband; she had in equity an absolute power of disposal over that estate. She had a power to enter into the agreement to mortgage, and that agreement must be specifically performed.

*Stead v. Nelson and others*,—at Westminster Nov. 18th, 1839.

### Queen's Bench.

#### [Before the Four Judges.]

#### MANDAMUS.—APPEAL.—NOTICE.

*The statute 5 & 6 W. 4, c. 50, gives a party aggrieved by any order or conviction made, or any matter or thing under that act, an appeal to the sessions. F. was, upon an information by a parish surveyor, convicted by two justices of an offence against that act. A party appealing must give notice to the person by whose act he is aggrieved. F. appealed against the conviction. He served a proper notice of appeal on the surveyors, and addressed a notice to both the convicting justices, but served it on one only: Held, that the parties by whose act he was aggrieved, were the convicting justices, and that the notice ought, therefore, to have been served on them, and as they were not joint officers, it ought to have been served on each of them.*

In this case a rule had been obtained calling on the justices of Bedfordshire to shew cause why a *mandamus* should not issue, commanding them to enter continuances and hear an appeal by one Foster against a conviction under the Highway Act, made by Messrs. Newland and Cooper, two justices of the county. An information had been laid against Foster, founded on the 47th sec. of the 5 & 6 W. 4, c. 50,<sup>a</sup> for unlawfully taking away ma-

<sup>a</sup> By which it is enacted, "That if any person shall, without the consent of the surveyor, take away materials which shall have been purchased, &c. for the repair or use of any highway, every person so offending, shall for every such offence forfeit, on conviction thereof, any sum not exceeding 10*l.*"

terials prepared for the repair of a parish road. By the 103d section,<sup>b</sup> the application of the penalties is directed to be one-half to the informer, and the other half to the repair of the highways, but in cases where the surveyor is the informer, then the whole is to go to the repair of the highways. By the 105th section,<sup>c</sup> the right of appeal is given, and regulations for appealing are there laid down. In this case, one of the surveyors was the informer. The defendant was convicted, and an appeal was lodged. Notice of the appeal was given<sup>d</sup> to one only of the justices, and both the surveyors ; the notice was addressed to the surveyors, and both the justices by name, and was served on both the former, but only on one of the latter.

Mr. Ganning shewed cause against the rule. The notice of appeal is insufficient, there ought

<sup>b</sup> By which it is enacted, that " all penalties &c. by this act imposed for any offence against the same, shall upon proof of the offences, &c. before any two or more justices, be levied by distress and sale of the goods of any offender by warrant, &c., and such penalties when levied, shall be paid, one-half to the informer, and the other half to the surveyor of the parish, to be applied towards the repair of the highways ; but in case the surveyor shall be the informer, then the whole shall be applied towards the repair of the highways."

<sup>c</sup> By which it is enacted, " That if any person shall think himself aggrieved by any order, conviction, judgment, &c. made, or by any matter or thing done by any justice or other person in pursuance of this act, and for which no particular method of relief hath been already appointed, such persons may appeal to the justices at the next quarter sessions of the peace to be held for the county, &c. wherein the cause of such complaint shall arise, such appellant first giving to the surveyor or surveyors, or to such justice or other person by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal."

<sup>d</sup> " To the surveyors of the highways of the parish of Cranfield in the county of Bedford, and to R. Newland and W. D. C. Cooper, Esquires, two of her Majesty's justices of the peace for the said county, and to every of them, and to all other persons whom it doth or may concern."

" I, William Foster, of, &c. do hereby give you and each of you notice that I do intend, at the next general quarter sessions of the peace to be holden, &c. to bring and prosecute an appeal against an order, conviction, or judgment made by you the said justices, or some or one of you, on, &c. whereby I was convicted in the penalty of 10/-.

" And I do hereby give you further notice that the grounds of such appeal are as follows :

" 1st. That the offence alleged to have been committed is not, and was not, at the time of making the said conviction, or at any time previously, within the jurisdiction of the said justices."

to have been notice given to both the justices. It cannot be contended that the surveyor is the party by whose act the appellant is aggrieved. He was aggrieved, if it all, by the conviction of the justices who made the conviction ; it is against their decision that the appeal is made, and to them the notice ought to have been given. If the notice ought to be to the justices, then it is clearly bad for not being served upon both. If it should be considered necessary to resort to the interpretation clause, then that clause (the 5th section) declares that when in the act the singular number is used, it shall be understood to express the plural also. It is therefore clear that when more justices than one convict, notice of appeal must be given to all. It may be argued here that though as a general rule notice ought to be given to both justices, that rule was substantially complied with, for that the notice was addressed to both, and on Mr. Newland's receiving it he sent it inclosed in a note to the clerk of the justices ; which note contained these words, " I have just had the enclosed put into my hands : you will know how to act with it." That however clearly cannot affect Mr. Cooper, who might never have heard of the notice or of the note. The fact that the notice was on the face of it addressed to Cooper as well as to Newland, makes no difference in the matter. In the *King v. The Justices of Norfolk*, Mr. Justice Taunton observed,<sup>e</sup> " The notice being addressed to all would not make the appeal more known to those who were never served." The reason and necessity for both being served were in the present case peculiarly strong. One of the objections intended to be raised against the conviction was that the justices had not jurisdiction over the subject-matter of the complaint. Suppose that to have been true, then in what situation would they have stood had the conviction been quashed upon the appeal ? They would have been liable to actions of trespass for enforcing their conviction by warrant ; and it was therefore clearly necessary that each should have notice of the peril in which he was sought to be placed. This is not like the case of churchwardens and overseers, or like any of those cases of several persons serving a joint office, where, by the very nature of their office, they form a sort of corporation. Thus in the *Queen v. The Justices of Warwickshire*,<sup>f</sup> a notice relating to parish business, served upon one overseer, was held to be a notice to all, because churchwardens and overseers form a sort of corporation. That, however, cannot be said of two justices acting on an information of this kind under the authority of a particular statute. In *Gude on Coroner*,<sup>g</sup> it is said distinctly that where one justice only is required by law to convict a man upon an information, yet if two make a conviction, notice of an intention to apply for a certiorari, to remove it must be served on both." And the case of *The King v. Baldwin*, H. T. 17 Geo.

<sup>e</sup> 2 Barn. & Ald. 947.

<sup>f</sup> 1 W. W. & D. 448. 6 Adol. & El. 873.

<sup>g</sup> Vol. 1, p. 422.

3, is cited as authority for the proposition. It is clear therefore both on principle and authority, this notice was insufficient. With respect to the notice given to the surveyor, such notice is not required by the statute; and an unnecessary notice to him cannot be substituted for a necessary notice to the justices.

**Mr. Byles** in support of the rule.—The party appealing here was as much aggrieved by the information preferred by the surveyors as he was by the conviction made by the magistrates. The service on the surveyors was correct. So was that on the justices. The question depends entirely on the words of the 105th section. That section, in addition to the regulation concerning notice, contains a clause giving the sessions power to award costs to the party appealing or appealed against. Now it is clear that the parties who would be liable to costs upon the conviction being quashed on such an appeal would be, not the magistrates, but the surveyors. The only notice, therefore, really required was, the notice to the surveyors, and that was duly given. In *The King v. The Justices of Hants*,<sup>h</sup> upon a section of exactly the same sort in the 4 G. 4, c. 95, the Court held that the party "appealed against" must be taken to be the informer, and not the justices, although notice was directed to be given to them. The surveyors here were the parties interested; the justices had no interest in the matter. The notice was, therefore, both on account of their interest, and on the authority of the *King v. Hants*, properly directed to be served on the surveyors. In *The King v. The Justices of Warwickshire*,<sup>i</sup> notice served upon one of several parish officers was deemed sufficient; and it is impossible to distinguish parish surveyors from churchwardens and overseers. It is clear, therefore, that the notice was sufficient, for the justices need not be served, and the notice to the surveyors was a good notice. Without some strong reason, the Court will not hold that in a case like the present there must be service on the justices who made the conviction, and that each of the justices must be separately served with notice. Such a course would be always inconvenient, and sometimes impossible; and the ends of justice might be defeated if it was required.

**Lord Denman, C. J.**—By the terms of the statute, the parties by whom the appellant was aggrieved appear to me to be the justices. They ought therefore to have had notice, and that notice ought to have been served on both of them.

**Mr. Justice Patteson.**—At all events the parties by whom the appellant was aggrieved were the justices or the surveyors. All ought therefore to have had notice. There is a clear distinction between the character of justices, and that of churchwardens and overseers. The justices are not joined together except for the performance of a particular act of duty; but the parish officers are one entire and connected body. The notice here was the more requisite to be given to the justices, because if

the conviction had been quashed, they might have been liable to an action of trespass.

**Mr. Justice Williams** concurred.

**Mr. Justice Coleridge.**—What are the words of the act? "That against any order, conviction, judgment &c., made or any matter or thing done by any justice or other person in pursuance of the act," the party aggrieved may appeal. But he must give notice to the person by whose act he is aggrieved. Here the persons are the justices. He must therefore give them notice, and for his notice to them to be good, it must be a notice given to both.

Rule discharged.—*The Queen v. The Justices of Bedfordshire, in the matter of Foster.* M. T. 1839. Q. B. F. J.

#### Queen's Bench Practice Court.

##### EJECTMENT.—SERVICE OF DECLARATION ON SECRETARY OF COMPANY.

*It is sufficient to serve the Secretary of the East India Company in an action of ejectment.*

**Sicann** moved for judgment against the casual ejector. The action was laid by the Coopers' Company for the recovery of certain premises in the possession of the East India Company. The affidavit of service stated the service had been effected on the secretary of the East India Company; the secretary was not resident on the premises in question. It was sworn that it was the belief of the deponent that the secretary was the proper person to be sued on behalf of the company.

**Littledale, J.**—I think that is sufficient service.

Rule granted.—*Doe d. Coopers' Company v. Roe*, M. T. 1839. Q. B. P. C.

##### DATING RULE.—DELAY OF COURT.—DISTRINGAS.—OUTLAWRY.

*A rule being moved for, and the Court taking time to consider, the rule being granted, may be dated of the day on which it was applied for.*

This was an application for a *distringas*, for the purpose of proceeding to outlawry. The application was originally made on Saturday, but the learned judge took time to consider the application, and did not deliver his opinion until the Tuesday following, when he granted the rule.

**Petersdorff**, who had made the application for the rule, submitted that the rule must be dated as of the day when the motion was made, and not of the day on which it was granted. This was very material to the plaintiff in order to avoid delay.

**Littledale, J.**—I think the rule may be drawn up as of the day on which the motion was made, and not as of the day on which I have granted it. The delay so caused by my taking time to consider, must be regarded as the delay of the court, and therefore the plaintiff must not suffer from it.

Rule accordingly.—*Egan v. Rowley*, M. T. 1839. Q. B. P. C.

<sup>h</sup> 1 Barn. & Ad. 654.

<sup>i</sup> 6 Adol. & El. 873; 1 W. W. & D. 438.

**IRREGULARITY OF JUDGMENT.—SHEWING CAUSE AGAINST RULE.—RULE TO COMPUTE.**

*A rule to compute cannot be successfully opposed by shewing that the judgment is irregular; but a separate application must be first made to set aside the judgment, for which application time will be given at the time of shewing cause against the rule to compute.*

In this case judgment was signed in an action on a bill of exchange, the defendant not having duly pleaded. A rule to refer this case to the Master to compute principal and interest on the bill having been served,

*Leahy* now shewed cause, and produced an affidavit, from which it appeared that the judgment was irregular.

*W. H. Watson* appeared to support the rule.

*Littledale, J.*—The irregularity of the judgment is not a ground for shewing cause against this rule, as long as the judgment stands. A separate application must be made to set aside the judgment. For that purpose I will stay proceedings on this rule.

*Leahy* accordingly moved to set aside the judgment.

Rule accordingly.—*Kelly v. Villebois*, M. T. 1839. Q. B. P. C.

**Common Pleas.****SERVICE OF RULE NISI.**

*Where a rule nisi to compute has been obtained, the defendant having gone abroad, it should be made a part of the rule that service at his ordinary place of abode, and by sticking up a copy of the rule in the Master's Office, shall be deemed good service.*

*Ogle* moved to make a rule to compute principal and interest on a promissory note absolute, on an affidavit of service. It was an action on a promissory note, against the defendant, who was a captain in the merchant service. The writ had been served at his residence, No. 45, Wellclose Square, in the month of September, and an appearance having been entered for him, notice of declaration was delivered to him at the same place, on the 24th of October. He then asked for time, and the plaintiff consented to allow him fourteen days to pay the debt and costs, at the expiration of which time a rule *nisi* to compute was obtained, but on an attempt being made to serve him at his house, it was stated that he was gone abroad, having sailed four days before. A copy of the rule was left with a female servant on the premises, and another copy was stuck up in the Master's Office; it was submitted that this was sufficient service.

*Tindal, C. J.*—The question is whether it should not have been part of the rule *nisi* that this should be deemed good service. The rule may be amended in that respect.

Rule refused.—*Neilson v. Slee*, M. T. 1839. C. P.

**Exchequer of Pleas.****FORMA PAUPERIS.—JUDGE'S POWER.—COMMENCEMENT OF SUIT.**

*After an action has been commenced, a plaintiff cannot be admitted to sue in forma pauperis.*

In this case a rule *nisi* was obtained by *Jervis*, calling on the plaintiff to shew cause why he should not be dispensed, and why proceedings should not be stayed until he had paid the costs of two several notices of trial, and also until he gave security for costs. It appeared that issue was joined on the 30th November, but no order to sue in *forma pauperis* had been obtained until the 30th January following. Subsequently notice of trial was given before the secondary; but on the day appointed the plaintiff withdrew the record. The order to sue in *forma pauperis* was left with the secondary, but had been lost. The plaintiff obtained another order and gave fresh notice of trial.

*Thomas* shewed cause.

*Jervis* supported the rule and contended that the order was irregular.

*Per Curiam.*—The order is clearly irregular, and the plaintiff must elect either to be dispensed or to find security for costs.

*Thomas* submitted to be dispensed.

Rule absolute accordingly.—*Lovewell v. Curtis*, M. T. 1839. Excheq.

**COURT OF REQUESTS ACT.—COSTS.—VERDICT.—PAYMENT INTO COURT.—PLEA.—JURISDICTION.**

*Where, from the language of a Court of Request Act, it appears that the plaintiff is only to be deprived of his costs in the event of a verdict being found for him to an amount less than a certain limited sum; taking an amount less than that limited sum out of Court does not come within the meaning of the statute.*

*Wordsworth* moved to enter a suggestion on the roll, in order to entitle the defendant to costs under the Gloucester Court of Requests Act, 1 W. & M. c. 18, sect. 1, upon an affidavit stating that the defendant resided within the city and county of the city of Gloucester. He submitted that the case came within the intent and meaning of the act, the plaintiff having recovered less than 40s., and that no trial had been necessary between the parties. The plaintiff had taken 1*l.* out of Court, which defendant paid in, which amounted to an admission that no more was due.

*Parke, B.*—I incline to think that the objection should have been taken by way of plea. But independently of that, upon attentively looking at the act, which is very obscurely worded, it is clear that it does not apply unless there has been a finding by verdict. The words are, "that unless the debt be found to amount to the full sum or value of 40s., no judgment shall be entered upon the record

upon any such verdict." The plaintiff cannot be deprived of his costs unless there has been a trial.

*Alderson*, B., was of the same opinion. There was a penalty for going to trial for a sum under the amount limited by the statute. The defendant should therefore have pleaded that he resided within the city of Gloucester, and that he was not indebted to the plaintiff to the amount of 40*s.* There would then have been a trial and a verdict, and it might then have been determined whether any judgment ought to be entered.

Rule refused.—*Jackman v. Cother*, M. T. 1839. Exch.

### CHANCERY SITTINGS.

*After Michaelmas Term, 1839.*

Before the Lord Chancellor,

AT LINCOLN'S INN.

Tuesday .. Nov. 26	
Wednesday .. 27	
Thursday .. 28	Appeals and Causes.
Friday .. 29	
Saturday .. 30	

Monday .. Dec. 2	First Seal—Appeal Motions with Appeals and Causes.
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Tuesday .. 3	
Wednesday .. 4	
Thursday .. 5	Appeals and Causes.
Friday .. 6	
Saturday .. 7	

Monday .. 9	The Second Seal—Appeal Motions with Appeals and Causes.
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Tuesday .. 10	
Wednesday .. 11	
Thursday .. 12	Appeals and Causes.
Friday .. 13	
Saturday .. 14	

Monday .. 16	The Third Seal—Appeal Motions with Appeals and Causes.
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Tuesday .. 17	
Wednesday .. 18	
Thursday .. 19	Appeals and Causes.
Friday .. 20	

Saturday .. 21	The Fourth Seal—Appeal Motions with Appeals and Causes.
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Monday .. 23 Petitions.

Before the Vice Chancellor,

AT LINCOLN'S INN.

Monday .. Dec. 2	The First Seal—Motions.
Tuesday .. 3	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday .. 4	
Thursday .. 5	

Friday ..	6	Short Causes, Unopposed Petitions, and Ditto.
Saturday ..	7	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday ..	9	The 2d Seal—Motions.
Tuesday ..	10	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday ..	11	
Thursday ..	12	
Friday ..	13	Short Causes, Unopposed Petitions and Ditto.
Saturday ..	14	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday ..	16	The Third Seal—Motions.
Tuesday ..	17	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday ..	18	
Thursday ..	19	
Friday ..	20	Short Causes, Unopposed Petitions and Ditto.
Saturday ..	21	The 4th Seal—Motions.
Monday ..	23	Petitions.

N. B.—His Honor the Vice Chancellor will sit at Lincoln's Inn after Term until the First Seal, to hear Motions and Causes by Order.

Before the Master of the Rolls.

AT THE ROLLS.

Monday .. Dec. 2 Motions.

Tuesday ..	3	
Wednesday ..	4	Pleas, Demurrers, Causes,
Thursday ..	5	Further Directions, and
Friday ..	6	Exceptions.
Saturday ..	7	

Monday .. 9 Motions.

Tuesday ..	10	
Wednesday ..	11	Pleas, Demurrers, Causes,
Thursday ..	12	Further Directions, and
Friday ..	13	Exceptions.
Saturday ..	14	

Monday .. 16 Motions.

Tuesday ..	17	
Wednesday ..	18	Pleas, Demurrers, Causes,
Thursday ..	19	Further Directions, and
Friday ..	20	Exceptions.
Saturday ..	21	

Monday .. 23 Motions.

Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

Exchequer Equity.

AT SERJEANTS' INN HALL, CHANCERY LANE.

Lord Abinger.

Tuesday .. Nov. 26 Petitions and Motions.

Wednesday ..	27	Petitions, Motions, Pleas, Demurrers, Exceptions, and Further Directions.
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## Mr. Baron Alderson.

Monday, Dec.	2	Petitions and Motions.
Tuesday ..	3	Further Directions, Exceptions to Reports and Causes.
Wednesday ..	4	
Thursday ..	5	Causes.

## Lord Abinger.

Friday ..	6	Pleas, Demurrers, Exceptions, and Further Directions.
Saturday ..	7	Petitions and Motions.

## Mr. Baron Alderson.

Monday ..	9	
Tuesday ..	10	Causes.
Wednesday ..	11	
Thursday ..	12	Petitions and Motions.
Friday ..	13	Pleas, Demurrers, Exceptions, and Further Directions.
Tuesday ..	17	
Wednesday ..	18	Causes.
Thursday ..	19	Petitions and Motions.
Friday ..	20	Pleas, Demurrers, Exceptions and Further Directions.

COMMON LAW SITTINGS,  
After Michaelmas Term, 1839.

## Queen's Bench.

## MIDDLESEX.

Monday, Dec.	2	
Tuesday ..	3	
Wednesday ..	4	Common Juries.
Thursday ..	5	
Friday ..	6	
Saturday ..	7	
Monday ..	9	Special Juries.
Tuesday ..	10	

## LONDON.

Wednesday Dec. 11 Adjournment-day.

## Common Pleas.

## MIDDLESEX.

Friday .. Nov.	29	
Saturday ..	30	
Monday, ..Dec.	2	
Tuesday ..	3	Special Juries.
Wednesday ..	4	
Thursday ..	5	
Friday ..	6	

## LONDON.

Adjournment-day .. Dec. 9 } Common Juries.

## Exchequer of Pleas.

## MIDDLESEX.

Tuesday, Nov.	26	
Wednesday ..	27	Common Juries.
Thursday ..	28	Revenue & Com. Juries.

Friday .. .. 29 Common Juries.

Saturday .. .. 30 }

Monday .. Dec. 2 } Special and Com. Juries.

Tuesday .. .. 3 }

Wednesday .. .. 4 }

Thursday .. .. 5 }

Common Juries.

## LONDON.

Wednesday Nov. 27 to Adjourn only.

Friday .. Dec. 6 } Adjournment day—.Com- mon Juries.

Saturday .. .. 7 }

Monday .. .. 9 }

Tuesday .. .. 10 }

Wednesday .. .. 11 }

Thursday .. .. 12 }

Friday .. .. 13 }

Saturday .. .. 14 }

Monday .. .. 16 }

Tuesday .. .. 17 }

Wednesday .. .. 18 }

The Court will sit at half-past nine o'Clock.

## THE EDITOR'S LETTER BOX.

According to two of the cases "A Subscriber" need not take out his certificate within a year from admission; but the point has not been decided in full Court. See *Ex parte Jones*, 2 Dowl. Prac. Cas. 451; *Ex parte Marshall*, 6 Ib. 526; but see *Ex parte Nicholas*, 6 Taunt. 408; and *Wilton v. Chambers*, 15 L. O. 123. There must be some limit of time between the admission and the certificate, though the cases have not yet settled it.

*Erratum* p. 53.—Post Office Act, 2 & 3 Vict., for cap. 42 read 52.

The letters of J. B. W.; "Lex;" J. E., jun.; and W. M., shall receive early attention.

The following Works have recently been published for the Proprietors of the Legal Observer:

The Practical Man, or Pocket Companion for Solicitors, Valuers, and Owners of Property: comprising Precedents, Rules, Tables, Calculations, &c., in those Matters of Professional and General Business requiring attention when reference cannot be had to the Library. By Rolla Rouse, of the Middle Temple, Esq., Barrister at Law. Third Edition, with numerous and material additions. Price 7s. 6d. cloth.

Copyhold and Court-Keeping Practice; with nearly Two Hundred Precedents, and the Act for the Amendment of the Laws with respect to Wills; intended not only for use in the office of the more experienced practitioner, but simplified in such a manner as to enable a Town or Country Solicitor, previously unacquainted with Copyhold or Court-Keeping Practice, to transact with ease all the General Business in Admissions, Purchases, Sales, Mortgages, Annuities, Leases, Trusts for Benefit of Creditors, Bankruptcy, Insolvency, Wills, Partitions, Enfranchisement Deeds and Values, Court-Keeping, Adjustment of Fines, Fees, &c. &c. By Rolla Rouse, of the Middle Temple, Esq., Barrister at Law. Price 10s.

# The Legal Observer.

MONTHLY RECORD FOR NOVEMBER, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## DEBATES IN PARLIAMENT RELATING TO THE LAW.

### COPYHOLD ENFRANCHISEMENT BILL.

As this measure will be resumed early in the ensuing session, it may be useful to state the prominent parts of the debate during the last session. On the motion for going into committee on the 5th June,

Sir Edward Sugden said:—I hope that my honorable and learned friend will postpone this bill till next session. I am friendly to a system of enfranchisement, and would be glad to co-operate with the learned gentleman opposite, in endeavouring to frame a measure giving greater facilities to powers of voluntary enfranchisement, and such other provisions as would meet the justice of the case; but I cannot consent to the compulsory powers, which would do great injustice to many parties, especially where a tenant for life might be obliged to pay for the enfranchisement of the reversion. I object also to the introduction of a system into this country which would call for the assistance of commissioners to be paid at the public expence. I hope, however, that the bill will be brought forward in the next session of Parliament; at such an early period as shall insure its being passed

Mr. James Stewart.—Sir, there are three modes by which enfranchisement of copyholds is to be effected by this bill. There is the voluntary mode, by means of the Tithe Commission; there is the compulsory mode, by the same means; and there are facilities independent of both these modes. Even then, should the compulsory clauses be taken out, two other methods would still remain; and therefore I do not think the right honorable and learned gentleman's objection forms any reason for postponing the bill. The bill was not brought forward on my own responsibility; but it was founded on the report of a committee which sat last year, composed of members of both sides of the House, and the resolutions were drawn up by the right honorable member for Tamworth. The details of the bill I have no objection to

see altered. I hope, therefore, that the House will allow me to proceed with the bill. I would be quite ready to abandon the compulsory clause, though I think it desirable, and to go on with the bill, taking the two modes of voluntary enfranchisement contained in it. If the bill has been brought to this stage late in the session it is no fault of mine, as I attended night after night for the purpose of forwarding it.

Sir G. Strickland.—Sir, I understand, from the speech of my honorable and learned friend, that he means to proceed with the bill, but to give up the compulsory clauses. But, Sir, it appears to me, that, even by giving up the compulsory clauses, its defects could not be remedied; and I shall therefore move that the committee be postponed to this day six months, and it will depend upon the support I receive, whether I shall press this motion to a division. I did not oppose the second reading, because I understood from the honorable member for Honiton that he would reprint the bill, and modify the compulsory clauses. The bill has been reprinted, but the clauses remain as objectionable as ever. I think it should have been intituled “A bill to take away the Rights of all Lords of Copyhold manors, and to compel the tenants, whether willing or not, to purchase the same.” The bill is a direct interference with the rights of private property in a manner in which the legislature never dealt with it before. Hitherto we have never interfered with those rights, except when great public utility demanded such a course. I think that any general bill, giving a compulsory power of enfranchisement applicable to all cases alike, would work great injustice.

Sir R. H. Inglis seconded the amendment.

The Attorney General.—I regret that any opposition is given to a bill which, I am convinced, would confer great benefits on the country. I myself brought in a bill for the enfranchisement of copyholds, founded on the report of the Real Property Commissioners; but that bill only provided for voluntary enfranchisement. A committee was then appointed, formed of members of both sides of the House, and in which the Right Honorable

Member for Tamworth took an active part, to consider the whole question ; and though, in the committee, I opposed the insertion of the compulsory clauses, yet, finding that they were strongly advocated by the honorable member for Tamworth, and other well informed persons, I gave way, and cheerfully yielded up this bill to the management of my honorable and learned friend the member for Honiton. The committee called before them the Tithe Commissioners ; and it was their opinion that its object could be effected, and effected beneficially ; though, as the honorable member for the North Riding said, no general rule could be laid down. That was the very reason why it was proposed to appoint Mr. Blainire, and other discreet men, to carry out its provisions, and see that justice were done both to the lord and to the tenant. I hope that the House will not allow the session to pass over without doing something to remove the reproaches cast upon the present law. I readily admit that the copyhold tenure has some advantages, but there is no advantage which could not easily be transferred to freeholds ; and what are the disadvantages of the tenure ? The interest of the lord in the soil is such as to work great public injustice. For instance, to all timber which is growing on copyholds the lord is entitled, and the result is, that none is planted, and this circumstance gave rise to the saying "that the oak was too noble a plant to grow on a servile soil." Then, again, on a re-grant on death or alienation, the lord is generally entitled to a fine, equal to two years improved value. So that no one will build upon copyhold land, or lay out any money to improve it. The honorable Baronet says that this bill would deal unjustifiably with private property ; but when the public good requires it, we must deal with private property, taking care, however, that all interested in the property should have ample compensation. In this bill all the interests of the lord are carefully guarded, and it is equally beneficial to the lord and to the tenant. As, however, I find, that the bill, as it stands, is to be strongly opposed,—and as, in the present state of the session, any measure so opposed, cannot be expected to pass,—I would advise my honorable and learned friend to withdraw the compulsory clauses. The bill, even then, would do much good. At present, when a tenant is on his death-bed, seven or eight different persons are waiting round him, in eager expectation for the preference, to seize upon his cattle. These are the remains of a barbarous age ; and if we can only get an alteration in this respect, from this bill, it will do good. If the House will consent to go into committee, I am sure my learned friend will do all that can be reasonably desired ; and I hope that we shall succeed in obtaining an instalment of progressive reform in copyhold law ;—for this bill, if it passes, cannot be held up as final, and you will never hear any thing of the finality of the Copyhold Reform Bill,—and, whilst any abuses are to be remedied, I, for one, hope that reform will proceed. I think that the present bill, even when altered,

is calculated to do great good ; and I trust that the owners of copyholds will gladly submit to regulations required for the public benefit,—following, in this, the example of the church on another occasion.

*Sir Edward Sugden.*—I have no objections to the alterations being made, provided that, when the bill is altered, ample opportunity be afforded for the discussion of the measure, and for pointing out the objections that may exist against it.

*Mr. Hope.*—It will be my duty to call the attention of the House to a petition I presented, containing a statement of the grievance that would be inflicted upon the stewards of manors by this bill ; and I also wish to remind the House of a petition presented from the steward of the manor of Wakefield to the same effect.

*Mr. Estcourt.*—The interpretation clause is much more comprehensive than as it was arranged when the bill was in committee ; and, in consequence, there is the most unjust interference with private property.

*Mr. Aglionby.*—If the House will not consent to go into committee except the compulsory clauses be struck out, I suppose the honorable mover must submit ; but I protest against striking out that which is the most important part of the bill. Still, however, much good will remain in the bill, and, if forced, I must assent to the sacrifice ; however I will never lose an opportunity, so long as I have a seat in the House, of endeavouring to get rid of this odious remnant of the feudal system.

*Mr. Freshfield* strongly supported the bill.

The amendment was then withdrawn ; the main question put, and agreed to ; the bill considered in committee, and reported.

The bill subsequently passed the House of Commons, the compulsory clauses being omitted.

On its introduction into the House of Lords, it was strongly supported by

*Lord Brougham*, who said, I rise to call your Lordships' attention to a bill, framed with the greatest care, founded upon the soundest principles, and dealing with a most important subject. It proceeds from the Real Property Commissioners, who, after much inquiry, produced a report on the subject of tenures. On some of the recommendations of that commission the present bill is framed ; and this measure has received the greatest consideration in the other House of Parliament, being founded on the recommendation of a select committee. I will state, briefly, to your Lordships, the object of this bill. A great part of the landed property of the country—and, among other portions, much that has been built over by towns, or that is situate in the neighbourhood of towns, and therefore likely to be built over,—is held by the tenure called copyhold. *Lord Coke*, and, after him, *Mr. Justice Blackstone*, have said that this tenure, though of a mean descent, is yet a very ancient house, coming, as it does, from the ancient condition of villeinage. It was an opinion explicitly stated by the latter authority, that the system of copyholds

in this country might be traced to villeinage. I am aware of only one eminent person connected with the legal profession, who has dissented from this opinion,—namely, Lord Loughborough, who once stated that copyholds were coeval with villeinage, and therefore could not have grown out of it. That opinion is backed to a certain extent, by a very learned and accurate German author, who states that there were copyholds in some parts of Germany, where there is no proof of villeinage having existed at any period; and also, in other parts,—coexisting with villeinage. The ancient villeins were, as all your Lordships know, originally slaves, in the full sense of the term, and could be disposed of like cattle, or other chattel property. By degrees they became attached to the soil, here, as in all other countries of Europe; and in those days, when the Crown made a grant of land to a great lord or other person, he usually distributed a portion of it among his followers, who held it as freehold, but on condition of tendering him certain services of a free nature, while he retained the rest of it as his own demesne, and cultivated it by his own villeins or serfs, to whom he allotted portions for their support. These portions they held as tenants at will; and they, originally, could be stripped of this land at the lord's pleasure. But, by degrees, they obtained both their personal liberty, and a firmer title to their possessions. They were still, in the eye of the law, merely tenants at will; but they were such tenants in very peculiar circumstances; the will of the lord coming, in process of time, to be regulated and determined by the customs of the manor, and in each manor the custom, which was its law, might vary.

Now, my Lords, the way in which the customs have arisen in each particular manor, forms the ground-work of the bill which I have the honour to propose to your Lordships. As in each manor the customs might vary, so in many they did and do vary; and they constitute the code of law in each manor, different from that which obtains in those parts of the kingdom, not held as parcels of manors, but by tenure wholly free. Let your Lordships only look at the consequences of this. The position of the ground, and its quality,—whether wood, river or mine,—the state of the inhabitants,—the degree of their civilization,—the amount of property held by the lord,—the amount of property held by the tenant: nay, more, the mere caprice of the lord,—all these considerations necessarily become severally the origin of the diversities which have sprung up, and still prevail, in the customs of manors. There was not a greater diversity in the laws under which France existed, before the *Code Napoleon* melted and amalgamated them all into one, than at this minute is to be found in England. That diversity of law everywhere prevailing in France, and justly regarded as its greatest opprobrium, still prevails here also. The first difference respects the enjoyment of land, and particularly the leasing power. Generally speaking, the tenant cannot lease for

more than a year; but, with the consent of the lord, he may grant a lease for a longer term. In many manors, however, the copyholder may lease for seven years; in others, for nine years; and again, in others for life; and, in one manor, the custom is to lease for life, and forty years afterwards. In like manner, the custom varies in different manors as to the amount of fee or fine to be paid to the lord for his licence to lease: that amount is sometimes perfectly indefinite, and the lord of the manor may demand whatever sum he pleases for his consent; consequently, the copyholder, in many instances, cannot lease at all. In other manors, the tenant may lease on payment of a certain fine,—and the amount of this varies in different manors. So much for the mode of enjoyment and their diversity, as far as tenure is concerned. But there is another diversity also, relating to enjoyment. In many, indeed in most manors, the timber which grows on copyhold land cannot be cut down by the copyholder, without the consent of the lord. Hence, timber is much neglected; and that which requires long time to rear, is wholly neglected: indeed it is a common proverb all over England, that "the oak will not grow except on free land." For the tenant cannot cut timber without the lord's leave, but so neither can the lord without the tenant's. Thus too, with regard to the enjoyment of underground property. Mines and minerals generally belong to the lord of the manor; but, by special custom, they may also to the tenant. So, again, as many diversities prevail in the custom of manors with respect to the transmission of copyhold property by descent. The widow of the copyholder is sometimes entitled to a third of the property for her dower; sometimes to a moiety; and sometimes to the whole. Nay, in some instances, she has the fee-simple; sometimes her right is unqualified; sometimes it is confined to her widowhood; sometimes to her chaste virility. The courtesy of the husband varies, as to birth of children, in like manner. Then again, when the property passes by descent, it comes sometimes to the eldest, and sometimes to the youngest son; in some manors all the brothers take together, and no particular son; sometimes it passes to the youngest daughter, sometimes to all the daughters in coparcenary, and sometimes the eldest daughter takes the whole. Sometimes it goes to all the brothers; sometimes to all the sons, if above a certain extent; if under it, to the youngest only. In some manors, the tenement goes to the eldest daughter for life, and then to the father's next heir male, claiming through males only. Nay, there was once a custom proved (the case is in Vernon) of a case so peculiar as this,—that the tenement went to the youngest child of the first wife, she being married when a virgin. There is equal variety in respect to the conveyance of the property,—whether by transfer *inter viros*, or by will,—and also in respect of the amount of the fine payable on the transfer. In most manors, the transfer is by surrender into the lord's hands, and admittances; but in

some cases, the conveyance is said to be by lease or release, though I certainly never knew an instance of my own knowledge. But the form of devising is very various. In some manors, no will can pass lands; in others, the power is absolute, but there is a surrender to the uses of the will; in some, a will is good for one year, in others for two years; and so, if in sound health of mind, a will have been made, but the tenant survived his faculties,—he dies intestate. The fine payable to the lord, in like manner, varies infinitely. Sometimes it is so many years of the mere copyhold rent; sometimes so many of improved value. In some, the fine is payable on the death of the lord only; in others, on that of lord and tenant; and in many, especially in the North, upon both of those deaths, and also alienation. But, in respect of what is deemed alienation, there is a like diversity of custom; for mortgage is, in this manor, held such, and entitles the lord to his fine; but, in that, it is otherwise. I will, however, mention as the worst and hardest case of all, the "manor of Pontypool;" where, besides these improved rents, upon death of both lord and tenant, a like amount is to be paid on alienation, including mortgage, and on all assignments or transfers of mortgage, and also on reconveyance, where the mortgage money is paid off. Thus, if a strip of land be sold for building, one fine is due, but only in proportion to the small value of the land uncovered. The purchaser then mortgages, to raise money for building, and pays another fine, also moderate. This mortgagee dies, and the money is called in, and the mortgage must be assigned to a new lender; but now the fine is in proportion to the rent of the houses built. Again it is transferred, and a new fine paid; then the mortgage is paid off, and a third fine is due on the reconveyance; and, finally, the lord and tenant die, and two more fines are due, in proportion to the improved rent; so that the value of the tenement is exhausted in fines. Hence, houses are not built at all.

Then, again, the custom differs with respect to heriots. Your Lordships must know that a heriot is the best chattel that the tenant has; and I believe that the famous race-horse Smolensko was once claimed as a heriot on Sir C. Bunbury's decease. But the evil does not stop here. If a piece of copyhold land descend according to the custom of gavel-kind, all the sons have to pay a heriot; and if the land be divided for building purposes, it may so happen that ninety or one hundred heriots will be payable. I have said enough to shew your Lordships that we ought to get rid of these diversities in the law, which, without doing much good to the landlord, are exceedingly injurious to the tenant. It was proposed, in the first instance, that the present system should wholly and at once be changed, by the immediate adoption of some general measure, by which all these diversities might be swept away. This course, however, was considered objectionable, as it would, in many instances, work injustice and be productive of much general inconvenience. A better plan

was suggested by the Real Property Commissioners,—namely, the affording great facilities for the enfranchisement of copyholds. In the first place, it was proposed that a certain proportion of the tenants in number and value should have the power of compelling the enfranchisement of the copyholds in any manor. Many objections were urged against this; and at last a different mode was devised. It was obvious, before any arrangements could be effected, that surveys and valuations must be made, with respect to the fines and other sources of revenue in different manors. For this purpose a department was required to superintend such proceedings; but instead of instituting a new board, it was found that the Tithe Commissioners could carry the necessary arrangement into effect in a satisfactory manner. The two commissioners, Mr. Blamire, (the late member for Cumberland), and the Rev. Mr. Jones, are willing to take upon themselves this additional duty, provided they are allowed to have an additional secretary and clerks, and two assistant commissioners; there being, indeed, two such authorised by the Tithe Act, and who have never yet been appointed. There is to be no compulsory power under this act, but with this exception, that a binding power is given to the majority of copyholders over the minority; and whenever the lord of the manor, together with more than one half of the copyholders in number, and three-fourths in value, assent to enfranchise their copyholds, provision is to be made to enable them to avail themselves of the power of the Commissioners, by appointing valuers, obtaining reports, settling disputes, and fixing the amount of compensation to the lord of the manor; and the residue of the tenants are to be bound to abide by the arrangement. But it has not been deemed advisable, at least in the first instance, to make the enfranchisement compulsory on the lord; his consent is therefore in every case required as a condition precedent to any operation. I have now explained both the ground of the measure, and its principal provisions. I have not troubled your Lordships with unnecessary statements in setting out the reasons for the bill; and I have endeavoured as much as possible, in my explanation of the bill, to avoid entangling the matter in any technical details, giving rather the general features and frame, than the minute provisions. Feeling satisfied that the bill will be productive of great good, I beg leave to move that you give it a second reading.

*Lord Lyndhurst.*—With respect to this bill, there are several parts of it of which I approve; but I think that others should be amended. I wish, however, to know from my noble and learned friend, whether he intends to proceed with the measure this Session?

*Lord Brougham.*—I will give an answer to my noble and learned friend to-morrow.

*The Lord Chancellor.*—My Lords, I do not know that there is any information that can be required for legislating upon this subject, which your Lordships do not already possess. I trust, therefore, that the bill will not be postponed,

as I am satisfied that it will be productive of great good.

The question having been put on the second reading, it was declared the "Contents" had it.

*Lord Lyndhurst.*—I said "Not Content" to the motion for the second reading. I thought it was understood that, after my noble friend opposite had stated the objects of the measure, he would state its further consideration.

*Lord Redesdale.*—I quite agree with the noble and learned Lord that this bill ought not to be proceeded with during the present session. I know that several noble Lords left town under the impression that an engagement had been made that the measure would be postponed. It has been upwards of a month on the table of the house, and no attempt has hitherto been made to advance it.

*The Duke of Wellington.*—I should have objected to the second reading, if I did not believe it to be understood that the bill would not be proceeded with this session.

*Lord Lyndhurst.*—When the question was put, I said "Not Content." I certainly think your Lordships are entitled to a division.

*The Lord Chancellor.*—I did not hear the noble and learned Lord say "Not Content."

The noble and learned Lord opposite may set the matter right again, by moving that the bill be committed.

*Lord Brougham.*—I beg to move that the bill be committed.

*Lord Lyndhurst.*—I have, then, but to oppose that motion.

The House then divided; when there appeared—

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*Lord Lyndhurst.*—I beg to say that I do not object to the principle of the bill, but to its details; and I shall be happy to assist my noble and learned friend (Lord Brougham) in framing and passing a similar measure in principle next session.

## PROPOSED ALTERATION OF THE LAW OF ATTORNEYS IN IRELAND.

The Attorneys and Solicitors of Ireland have very laudably, for a considerable time past, endeavoured to effect some important improvements in the constitution of their branch of the profession. Our readers are aware that anciently in England, as well as in Ireland, every attorney was obliged to belong to an Inn of Court or Chancery, and many Rules of Court were made to compel their admission into those "ancient and honourable" societies. The last of these Rules of Court was made in Michaelmas Term

1704. Many of the attorneys now practising here are members of one of the Inns of Court, but of late years the Benchers have made regulations, on the alleged ground, we believe, of want of room in their halls, by which attorneys cannot be admitted whilst in practice, except for the purpose of holding chambers. We know that several able and active practitioners have strongly objected to these recent regulations by which the two branches of the profession have been severed from each other; and it is urged that it would conduce to the honour and interest of the profession at large, and the good understanding of both of its branches, if they were united in one great society or college, according to their respective ranks and degrees.

In Ireland, it appears, that the attorneys are still required to be members of the Inn of Court of Dublin (the King's Inn Society), and cannot take an articled clerk without the permission of the Benchers. The attorneys seem to entertain the opinion that there is but small honour and no profit or advantage in this enforced association, and they desire either to have a moderate though subordinate share in the government of the King's Inn, in return for large contributions to its funds, or to be separated from it altogether, and apply their resources to their own advantage, and the improvement of their branch of the profession.

In order to effect one or other of these objects the Law Society of Ireland prepared two bills, which were brought in and printed at the close of the last session; and in order that our readers may be aware of the effect of the two proposals, we shall lay before them a summary of each bill. We find that before these measures were introduced into Parliament, they were submitted to the Benchers in order to obtain their concurrence to one of them. The Benchers however did not deem it expedient to assent to either, and the attorneys, as we have been lately informed, intend to press forward one or other of the bills next session.

We some time ago quoted the return made to Parliament of the fees paid to the King's Inn by the attorneys of Ireland and their articled clerks (or apprentices), and the large annual sum received from the Stamp Office out of the certificate duty paid by attorneys.\* It is worth while to inquire why a similar repayment is not made from the certificate duty in England, which, being by the last returns 85,000*l.* a-year, might well afford something handsome to

\* See 18 L. O. p. 247.

wards the means of professional education and improvement in this part of the empire.

The following is the first of the two bills, which was brought in so late as the 14th August. It is intituled a Bill " For the better regulation of the profession of Attorney and Solicitor in Ireland."

The preamble recites that it is expedient that provision should be made for the better regulation of the profession of attorney and solicitor in Ireland, and to insure the education, skill and respectability of persons admitted to the practice thereof, and for that purpose it is necessary that the several acts hereinafter mentioned should be repealed, and other provisions made in lieu thereof.

After a certain time it is therefore proposed to repeal the following acts:—7 Geo. 2, c. 5; 13 & 14 Geo. 3, c. 23; 1 & 2 Geo. 4, c. 48; 3 Geo. 4, c. 16; except such parts of the two last acts as do not relate to Ireland, with a proviso for persons now entitled to rights under such acts.

The bill then follows pretty closely the precedent of the 2 Geo. 2, c. 23, and provides as follows:—

That no person shall practise as an attorney or solicitor unless admitted before the first day of Michaelmas Term next, or if afterwards, in manner provided by this act. That no person be admitted unless articled and serving for five years, or (if a graduate) three years, as the case may be.

Provision is then made for filing an affidavit of enrolment, and for entering the substance in a book. No attorney having discontinued to practise is to retain an apprentice, and the apprentice to serve the whole number of years in the proper business of an attorney. Attorneys are not to act as agents for unqualified persons under penalty of being struck off the roll.

The bill then recites that in order to carry the purpose of this act into operation and effect, it is necessary that the several persons who shall be at the time of the passing of this act members of the profession of attorney and solicitor in Ireland, and all such persons as shall hereafter, under the provisions of this act be admitted solicitors and attorneys in Ireland, shall form and constitute a society to be called and known by the name and stile of "The Society of Attorneys and Solicitors of Ireland," and that such society shall have a council composed of members of the said society of attorneys and solicitors; it is therefore proposed to be enacted, that for ever hereafter there shall be a council, to be composed of twenty-four members thereof, which council shall consist of a president, two vice-presidents and twenty-one assistants, seven of whom shall be a quorum for all the purposes of this act.

Provisions are then made for an annual general meeting for the election of the council, secretary and treasurer, and for supplying va-

cancies in the president or vice-president, and secretary or treasurer, with power to the council and general body to make rules as to articled clerks, &c. subject to the approbation of the judges, and to alter them from time to time, subject to like approbation.

Power to council to make bye-laws for their own government, subject to the approval of general body.

Two annual general meetings of the society to be holden.

Power to call special general meetings.  
Service on the secretary good service.

Then come the following proposed regulations for the examination of persons seeking to be admitted:—

That the Lord High Chancellor of Ireland, the Master of the Rolls in Ireland, and the Judges of the Courts of Queen's Bench, Common Pleas and Exchequer, in Ireland, or the major part of them, shall nominate and appoint twelve persons, being attorneys and solicitors in Ireland and members of the said society, to be examiners of all persons desirous of being admitted attorneys or solicitors into any of the Courts of Law or Equity in Ireland; and that any three<sup>a</sup> of such examiners shall be competent to conduct the said examination; and that (subject to such appeal as hereinafter-mentioned), no person shall be admitted to be sworn an attorney or solicitor of any of the said Courts of Law or Equity, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney or solicitor (as the case may be), such certificate to be in force only to the end of the term next following the date thereof, unless such time shall be specially extended by order of the Judge of the Court to which any application shall be made.

That the examiners so to be appointed shall meet and conduct the examination under rules and regulations to be framed by the council of said society, the same being first submitted to and approved by the said Lord High Chancellor, Master of the Rolls and Judges of the said Courts of Queen's Bench, Common Pleas and Exchequer, or the major part of them, such rules and regulations not to be of any force until one month from the time they shall have been submitted for the approbation of the Lord Chancellor and Judges aforesaid, after which the same shall be printed, and posted in the common hall or other place of public meeting of the said society.<sup>b</sup>

That such examinations shall be held in the hall of the said society, or, until such hall be built or provided, in such other place as the council of the said society shall appoint, on such days in each term as the said examiners,

<sup>a</sup> Here the number of examiners required to be present is five.

<sup>b</sup> It will be observed that this differs from the English rules of Court, but we see no objection to the alteration. ED.

or any five of them, shall appoint; and that any person not previously admitted an attorney or solicitor, and desirous of being first admitted into any of the said Courts, shall give a full term's notice in writing to the said examiners of his intention to apply for examination, by leaving the same with the secretary of the said society in the office of the said society, which notice shall be in such form as shall be prescribed by any rule or bye-law of the said society.

That every person so applying shall attend the said examiners at such time or times, and at such place or places, and produce such documents and submit to such rules and regulations, as shall be appointed by the council of the said society, and approved of by the Lord High Chancellor, Master of the Rolls and Judges, as hereinbefore mentioned.

That upon compliance with the aforesaid regulations, and when the major part of the said examiners actually present at and conducting the said examination shall be satisfied as to the fitness and capacity of the person so applying to be admitted into any of the said Courts, but not otherwise, the said examiners so present, or the major part of them, shall and they are hereby required to certify the same under their hands in the form in the schedule to this act annexed.

That in case any person shall be dissatisfied with the refusal of the said examiners to grant such certificate, he shall be at liberty to apply for admission by petition to the Court in which he shall be desirous of being admitted, upon which application no fee shall be required, and such petition shall be verified by affidavit, and shall be heard by such court at such time as it shall appoint, and such court shall upon the hearing thereof make such order as to it shall seem meet: provided that such petitioner shall be and is hereby required to give or cause to be given ten days' notice in writing of the day appointed for such hearing, and also a copy of such petition and affidavit, to the said examiners, by leaving the same with the senior examiner, and also with the secretary of the said society, in the office of the said secretary; and that it shall and may be lawful for the said examiner or society, by their secretary, council, or solicitor to appear and be heard at the hearing of such petition.

That the judges of the said courts respectively, if they shall see fit, may, before they shall admit any person to be an attorney or solicitor, examine and inquire by such further or other ways and means as they shall think necessary touching the fitness of such person to act in that capacity, and if they respectively shall be satisfied that such person is duly qualified to be admitted to act in that capacity, then the said judges of the said courts respectively shall and they are hereby authorized and required to administer in open court to such person the oath hereinafter directed to be taken by attorneys or solicitors in addition to the oath of allegiance; and after such oaths taken, to cause such person to be admitted an attorney or solicitor, as the case

may be, in such court, and his name to be enrolled as an attorney of such court.

Attorneys to take oath in schedule on admission instead of the oaths now taken, and the names of persons are to be enrolled.

Persons admitted in one court are not required to give notice of their intention to apply for admission into other courts.

The provisions regarding the re-admission of attorneys, are proposed to be somewhat different from those in England, particularly in requiring an examination, and we think the alteration suggested is an improvement.

That any person who having been admitted an attorney or solicitor of any of the said courts, whose name shall have been removed from the said roll, shall at any time afterwards be desirous of being re-admitted, and of having his name replaced on such roll, such person shall be and is hereby required to cause a notice of his intention to apply for that purpose to be posted in the said courts respectively, and a copy of such notice to be delivered to the secretary of the said society six weeks at least before the commencement of the term in or as of which he may desire to be re-admitted, and such notice shall state his place or places of abode at the time of posting and delivering the same, and during the time he shall have so ceased to practice as an attorney or solicitor, and his occupation during such time, and such person so applying shall attend the examiners to be appointed as aforesaid, and answer all such questions as they shall think fit to put in reference to his occupation or otherwise during the said period in which he shall have so ceased to act as an attorney or solicitor, and all other matters proper or material to determine his eligibility to be re-admitted; and it shall not be lawful to replace the name of any such person on the said rolls, or to re-admit him to be a solicitor or attorney of any such court unless the statements contained in the said notice shall be verified by affidavit, nor unless he shall produce to such court a certificate signed by the said examiners or by the major part of those present as aforesaid, that he is a fit and proper person to be re-admitted: provided that in case any such person shall be dissatisfied with the result of such certificate, he may nevertheless apply by petition, to be verified by affidavit, for re-admission to the said court, giving the like notice to the said society of the time appointed for the hearing of such petition as hereinbefore required in the case of persons dissatisfied with the refusal of the certificate to be obtained by persons for the first time applying for admission; and that on the hearing of such petition it shall be lawful for such court to re-admit or refuse to re-admit such person as it shall deem proper, after hearing the matter and any thing which may be alleged by the said examiners or by the said society, their secretary, counsel or solicitor.

Attorneys and persons intending to become attorneys not to be obliged to belong to the Society of King's Inn, Dublin.

The other bill "For the Incorporation of the Society or Association commonly called and known as the Society of the King's Inns, Dublin, and for enabling the same to make and ordain Orders, Rules and Regulations for the better Government of the Profession of the Law in Ireland," recites that it is expedient and necessary that provision should be made for the due and better regulation of the professors of the law in Ireland, and particularly for the due and better regulation of the profession of Attorney and Solicitor, which is of great antiquity in Ireland, and of great importance to the public, and to insure the education, skill and respectability of persons admitted to the practice thereof: And that it is for that purpose necessary that the several acts hereinafter mentioned shall be repealed, save as hereinafter provided, and that other provisions shall be made in lieu thereof.

1. Repeal of former acts.
2. Persons not to practise as attorneys or solicitors unless previously admitted.
3. Persons not to be admitted as attorneys unless they have served under indentures of apprenticeship.
4. Attorneys having left off practice not to have or retain apprentices.
5. Apprentices to attorneys to be actually employed during the term of apprenticeship.
6. Attorneys allowing unqualified persons to practise in their names to be struck off the roll.
7. And reciting that a certain society or association commonly called and known by the name of "The Society of the King's Inns, Dublin," hath been a society in existence for a long period of years in that part of the United Kingdom of Great Britain and Ireland called Ireland, and which society is composed of the judges, barristers and attorneys of her Majesty's Courts in Ireland, and hath been usually governed by a body called "The Benchers," consisting of the Lord Chancellor, the other judges of the Supreme Courts, certain law officers of the Crown, Queen's counsel and barristers, but no member of the profession of attorney or solicitor has been for many years admitted to be one of the said benchers, or to take any part or share in the management or control of the said society, or in the disposal of the funds thereof, although all the members of such profession of attorney and solicitor are members of such society, and are equally eligible and entitled with the other members thereof to be benchers of the said society, and to take a part in the management or control of such society, and in the disposal of the funds thereof: And that the said benchers have from time to time made rules and regulations for the admission of persons seeking to become apprentices to attorneys and solicitors, and have also required persons seeking to become attorneys and solicitors, to become members of such society, and have also imposed certain fees to be paid by such persons to said society, and have also assumed a right to make and ordain rules and regulations for the government of the profession of attorney and solicitor in
- Ireland: And that it is expedient and necessary that the said society shall be duly and legally constituted and placed under due and proper regulations by and under the authority of Parliament, and so as that the members thereof being attorneys or solicitors, shall have a due and adequate share and participation in the government, management, and control of the said society, and of the property, funds and revenues thereof; and that the said society when so duly regulated and established shall be empowered to make and ordain rules and regulations for the government and practice of the professors of the law in Ireland; it is therefore proposed to be enacted, that from and after the passing of this act, the professors of the law of and in that part of the United Kingdom of Great Britain and Ireland called Ireland, and the several members of the said society called and known by the name of "The Society of the King's Inns, Dublin," and their successors, to be appointed, elected, chosen and admitted in manner hereinafter mentioned shall be and be deemed for ever hereafter one body politic and corporate in deed and in fact, and shall be called and known by the name of "The Society of the King's Inns, Dublin," and by that name shall have perpetual being and succession, and shall be capable to acquire, have, take and hold lands, tenements and hereditaments to them and their successors for ever, not exceeding in the yearly value the amount of      pounds at the time of the purchase thereof, and goods and chattels to any amount whatsoever, and shall and may grant, let, assign and dispose of the same at their will and pleasure, and that by that name they may plead and be impleaded, sue and be sued in any Court of law or equity in Ireland whatsoever; and that the said society shall and may make, have and use a common seal, and that they and their successors may break, alter and change the same at their will and pleasure; and that the said society shall consist of the several persons who are now members of the said society, or who shall hereafter be called or admitted under the provisions of this act barristers at law or attorneys or solicitors in Ireland, so long as such persons respectively shall continue barristers, or attorneys or solicitors respectively.
8. Vesting certain duties on stamps on admission of students of law in the society of King's Inns.
9. Appointing council for government of the King's Inn Society.
10. Eighteen members of the council to be elected from amongst the attorneys and solicitors, members of the society.
11. That the said benchers hereby nominated and appointed, and the said eighteen attorneys or solicitors so to be elected in manner hereinbefore provided, shall be and they are hereby declared to be the first council or benchers of the said society, and shall act as such in manner hereinafter provided under the provisions of this act: Provided nevertheless, that when and so soon as there shall have occurred four vacancies amongst the benchers, being bar-

risters, or persons called to the bar, and not being judges, the said council or benchers of said society shall thereafter consist of forty-five members only.

12. Number of benchers of the society to be forty-five.

13. Judges resigning their office to be appointed visitors.

14. For supplying vacancies where barristers, members of the society, shall die or resign.

15. That whenever any of the said benchers, being an attorney or solicitor, shall die or resign his said office of bencher, or shall go to reside out of Ireland, or shall become incapable of acting as such bencher, that then and in such case it shall and may be lawful to and for the members of the said society, being attorneys or solicitors, and they are hereby required to choose and elect from amongst their own body a person duly qualified to supply such vacancy in manner hereinafter mentioned.

16. The council, when completed, to have the management of all estates of the society, and to make bye laws, &c.

17. Appointment of visitors.

18. Who to be first appointed visitors.

19. Visitations to be held on the 1st of February 1840, and upon the day after the last day of Hilary Term in every year.

20. Accounts of receipt and disbursements &c., to be given to visitors certified by under treasurer and three benchers.

21. Benchers within three months after council completed to make rules for the regulation of the society.

22. Affidavits required by this act to be filed with under treasurer.

23. That it shall and may be lawful to and for the said benchers of the said society for the time being, to charge, alter, vary or report such rules, regulations, ordinances and orders, or any of them, in such manner as shall seem to them necessary or expedient, and to make, ordain and appoint other rules, regulations, ordinances and orders in lieu and stead thereof, and that such rules, regulations, ordinances and orders shall and the same are hereby declared to be binding and effectual upon such persons seeking to be articled or bound to any attorney or solicitor in Ireland, and persons seeking to be admitted to or entitled to practise in the profession of attorney or solicitor in Ireland.

24. Not to abridge judges' power to refuse to admit persons as attorneys.

25. Persons struck off the roll of attorneys of one Court, to be deemed to be struck off the roll of all the Courts.

26. Persons so removed may apply to be readmitted.

27. Persons so struck off not appealing within stated time, to be for ever incapacitated from acting as an attorney or solicitor.

28. That the said benchers shall, and they are hereby directed and required, within three months after the said council shall be so completed by the election of such eighteen attorneys or solicitors to be members of said council and benchers of the said society as hereinbe-

fore provided, and from time to time, as occasion shall require, to nominate and appoint fit and proper persons, being members of said society, and barristers at law or attorneys or solicitors, to deliver lectures upon such branches of the study and practice of the law as the said benchers shall deem necessary and expedient; and shall appoint and pay such salaries or other payments to such lecturers as they the said benchers shall consider proper and necessary, and which lectures shall be regulated in such manner and delivered at such times and places as the said benchers shall appoint, and shall be open to all apprentices of attorneys or solicitors, and to all attorneys or solicitors, under such regulations and upon payment of such fees (if any) as the said benchers shall appoint; and also to nominate and appoint twelve persons, being attorneys and solicitors in Ireland, and members of the said incorporated society, and not being benchers of the said society, to be examiners of all persons applying to be articled or bound to any attorney or solicitor in Ireland previously to such person being so articled or bound, and also to be examiners of any person seeking or applying to be admitted to or entitled to practise in the profession of attorney or solicitor in Ireland, and that any three of the said examiners shall be competent to conduct the said several and respective examinations.

29. Examiners to proceed in examinations of persons applying to be articled to attorneys or solicitors, as directed by rules made by benchers.

30. And in examination of persons applying for admission. Examiners rejecting candidates, to make special report. Present examiners of Courts of Queen's Bench, Common Pleas, and Exchequer continued.

31. Certificate of examination to be given.

32. Persons applying to be admitted, to take oath in schedule, instead of oaths hitherto taken.

33. Persons dissatisfied with examiners' decision, may appeal to the benchers.<sup>a</sup>

34. Benchers to determine on such appeals within fourteen days.

35. Decision on such appeal to be final.

36. Persons admitted of one Court, not required to be examined on applying for admission in another Court.

#### BARRISTERS CALLED.

*Michaelmas Term, 1839.*

LINCOLN'S INN.—November 19.

Thomas Flowers.

William Daniel Bullock.

Joseph Whalley.

Luinsden Mackeson.

Josiah Heale.

November 22.

Alban Charles Stonor.

Charles Cassidy.

<sup>a</sup> The benchers in this bill are proposed to be substituted for the Judges.

John Todd, jun.  
Andrew Bisset.  
Roger Wood.

**INNER TEMPLE.—November 22.**  
Richard Ford.  
William Atherton.  
James William Daedonald.  
George Tickell.  
Edward Platt.  
John Williamson Fulton.  
James Plaisted Wilde.  
William Forsyth.  
George Taylor.  
Robert Thorpe.  
William Webster Watson.  
John Edward Panter.  
Stephen Charles Denison.  
George Wilkin.  
George Goodin Moulton Barrett.  
John Edward Giles.

**MIDDLE TEMPLE.—November 6.**  
Patrick Robert Welch.  
Hamilton Gorges.  
Rolla Rouse.  
Henry Nichols.

**November 22.**  
Matthew Fortescue.  
James Vaughan.  
Vincent Dowling.  
Thomas Hanmer.  
Edward Windsor.  
Edmund Humphrey Woolrych.  
Simon Bristowe.  
George Henry Woodward.  
John Monk.  
John Burmester.  
James Jell Chalk.

**GRAY'S INN.—November 20.**  
Richard George Stevens.

### CANDIDATES WHO PASSED THE MICHAELMAS TERM EXAMINATION, 1839.

<i>Name of Applicant.</i>	<i>Name &amp; Residence of Attorney to whom articled, assigned, &amp;c.</i>
Adney, Frederick	Henry Mooring Aldridge, Poole.
Anderson, Thomas Francis	George Anderson, Ludlow, Salop ; assigned to George Pleydell Wilton, 16, Gray's Inn Square.
Arthur, Edward	George Eastlake, Plymouth.
Ashford, Robert	Henry Scarth, 2, Lyon's Inn.
Awdry, Frederick	West Awdry, Chippenham, Wilts.
Baker, John Howard	Richard Underhill, Birmingham ; assigned to William Wills, Birmingham.
Bentall, Francis	John Coles, 25, Throgmorton Street.
Bartlett, Robert Henry William	Samuel Craddock, Shepton Mallet ; assigned to Edward Michell, Shepton Mallett.
Bartlett, Alfred Durling	Robert Bartlett, Reading.
Beaton, Charles	Robert Cook, Bath.
Bell, Adam	John Law, Manchester.
Bircham, Merrick Bircham	Francis John Gunning, Cambridge ; assigned to Frederick Talbot, 47, Bedford Row.
Bonsall, John George William	John Thomas Herbert Parry, and John Jones Atwood, Aberystwith.
Booth, Charles Brook	George Holmer, 23, Bridge Street, Southwark.
Bowden, James, (B. A.)	William Tooke, 39, Bedford Row ; assigned to William Ogle Hunt, 10, Whitehall.
Boyson, John Robert	Edward Gatty, 2, Red Lion Square
Braithwaite, Francis, the younger	George Rawson, Nottingham ; assigned to James Parke, 63, Lincoln's Inn Fields.
Briggs, William Sturges	Thomas Briggs, 55, Lincoln's Inn Fields.
Brown, William	Richard Maychell, Bolton-le-Moors, Lancaster ; assigned to William Christopher Chew, Manchester ; assigned to William Hugh Myers, Back King Street, Manchester.
Brownell, James	William Pass, Altringham.
Bullock, John Henry	Alexander Thompson, Manchester.
Capron, Thomas William	George Capron, 9, New Burlington Street ; assigned to Thomas Loftus, New Inn.
Carslake, John Hawkey Bingham	John Sinale, Exeter.
Charlesworth, Thomas Mitchell	Edward Sykes, Wakefield.
Cheshire, Barnabas, the younger	John Rawlins, Birmingham.
Chesshyre, Charles John	John William Fleetwood, Wolverhampton.
Cleverton, Fred. Wm. Pouget	John Kelly, Plymouth.
Cock, Peter	George Simmons, the younger, Truro.
Coleman, Samuel	Matthew Rackham, Norwich ; assigned to George Frederick Hudson, 23, Bucklersbury.
Colley, William	Meaburn Staniland, Boston.
Collyns, Davenport Welch	John Gidley, Exeter.
Comins, Richard	Robert Loosemore, Tiverton, Devon ; assigned to William Henry Clapham, 29, Great Portland Street.

Name of Applicant.	Name & Residence of Attorney to whom articled, assigned, &c.
Coulton, John James, the younger	John James Coulton, the elder, Kings Lynn.
Davies, William Brissett	Sir Geo. Stephens, Knt., 17, Kings Arms Yard, Coleman St.
Dewes, Henry	Richard Dewes, Coventry.
Donald, John Reed	George Frederick Fairclough, Liverpool.
Ebden, John	William Hazard, Redenhall-with-Harleston, co. Norfolk.
Ellison, Richard	Joseph Hayward, Sheffield.
Evans, John, the younger	David Davies, 51, Leicester Square.
Fairbank, David	George Allison, Richmond, county York, and Darlington, county Durham.
Fairthorne, Edward Falkner	Frederick Day, Hemel Hempstead ; assigned to Thomas Fairthorne, St. Albans ; assigned to Thomas Pocoek, 59, Bartholomew Close.
Francis, Frederick	George Shaw, Billericay, Essex.
Gace, Langley	Frederick Lucas, Louth, Leicester.
Gibbs, Thomas Washbourne	Frederick Dowding, Bath.
Gillam, Edward	Robert Gillam, the younger, Worcester.
Hancock, John Cree	John Hull Terrell, Exeter ; assigned to Hull Terrell, 30, Basinghall Street.
Hellawell, John Beaumont	William Barker, Huddersfield.
Hodgkinson, Grosvenor	George Hodgkinson, Newark-upon-Trent.
Hooper, Alfred Catchinayd	Robert Osborne, Bristol.
Hughes, Seneca	William Hughes, 7, George Street, Minories.
Hussey, John	Robert Heming Parr, Poole.
Inglesant, Joseph	Thomas Harrison, 5, Walbrook.
Jacobs, William	Robert Barbor, 122, Fetter Lane ; assigned to Francis John Gough, 32, East Street, Red Lion Square ; assigned to Richard Nation, 23, Somerset Street, Portman Square.
King, Davis Porter	John King, Buckingham ; assigned to Thomas Kennedy, 100, Chancery Lane.
Lawley, Frederick	Charles Salt, Rugeley.
Lee, Robert Paramor	William Lee, Sandwich.
Longcroft, Charles John	Charles Beare Longcroft, Havant, Herts ; assigned to William Bromley, 3, Gray's Inn Square.
Lowe, Francis	William Lowe, 2, Tanfield Court, Temple.
Macdonald, Henry Robert	G. Rawson, Nottingham ; assigned to Rich. Hole, Leicester.
Maples, Samuel	Robert Soulthorpe, Peter Gate, Nottingham.
Marratt, William, the younger	Thomas Blackwell Mason, Doncaster.
Marsh, John Fitchett	Joseph Wagstaff, Warrington.
Metcalfe, Frederick	Thomas Metcalfe, 5, Lincoln's Inn.
Morgan, James Arthur	John Carr, Bedford Row ; Arthur William Tooke, Bedford Row.
Newman, Richard	Matthew Brettingham, Kingsbury, Bungay, Suffolk ; assigned to John Chevallier Cobbold, Ipswich ; assigned to Alfred Cobbold, 5, Chancery Lane.
Nodes, Stephenson	John Oliver Jones, 1, John Street, Bedford Row ; assigned to John Philpot, 3, Southampton Street, Bloomsbury.
Oliver, John Bass	Thomas Fowke Andrew Burnaby, Newark-upon-Trent.
Overton, James	John Overton, Fakenham, co. Norfolk.
Parrott, William	Robert Southee, 16, Ely Place ; assigned to Edward Augustine Vorley, Stoney-Stratford, Buckingham.
Paxon, Francis	Gustavus Thomas Taylor, 18, Featherstone Buildings.
Percival, Andrew	John Gates, Peterborough.
Philips, Charles Frederick	John James, jun., Newnham ; James Leman, 51, Lincoln's Inn Fields.
Pilgrim, John Thomas	Henry Power, Atherston.
Plews, Thomas	Edward Lawrence, 32, Bucklersbury.
Polydore, Henry	Edmund Sambert Newman, Cheltenham.
Preston, Charles	Isaac Preston, the younger, Yarmouth.
Prothero, Charles	Thomas Phillips, the younger, Newport, Monmouth.
Purvis, Frederick	James Wenn, Ipswich, assigned to John Dyneley, 1, Field Court, Gray's Inn ; assigned to John Coverdale, 1 Field Court, Gray's Inn.
Riccard, Russell Martyn	James Edward Jackson Riccard, Southmolton, Devon.
Roberts, Frederick Rowland	Horatio Hughes, Aberystwyth.
Robinson, Joseph	James Jay, Hereford.
Rowland, John Leche	William Cooper, Shrewsbury.
Salmon, George	Edmund Lloyd, Thornbury.
Salomon, Joseph Constant	George Booth, 4 Newman Street, Oxford Street ; assigned to Charles Addis, 10, Great Queen Street, Westminster.

Name of Applicant.	Name & Residence of Attorney to whom articled, assigned, &c.
Salmon, William	Sturley Nunn, Ixworth, assigned to Harry Wayman, Bury St. Edmunds.
Sharland, George Edward	John Physick, the younger, Bath.
Sheppard, Thomas James	Francis Philip Wingate, East Stonehouse, Devon.
Slade, James Frederick	Philip Goode, Howland Street, Fitzroy Square ; assigned to Charles Dodd, Craven Street.
Smith, James Knight	Clement, Chadborn, Newnham ; assigned to Thomas Elliott, Newnham.
Smith, Robert	William Dean, 109, Guildford Street.
Snell, George Wells	William Thaliessen Morgan, Launceston.
Sparke, James Bird	Godfrey Goddard, Wood Street ; Frederick Harrison, 34, Bloomsbury Square.
Stevens, Charles, jun.	James Dougan, 7, Symond's Inn.
Stone, David Henry	Frederick Nicholls Devey, 34, Ely Place.
Stone, John	Henry John Mant, Bath.
Strick, Edward	John Williams, Swansea ; assigned to John Jackson Price, Swansea.
Surrage, John	Thomas Lyddon Surrage, Sandwich.
Teale, William	Robert Barr, Leeds.
Theobald, John Peter	John Theobald, 2, Staple Inn.
Thompson, John	Walter Burley, Shrewsbury ; assigned to Jonathan Scarth, Shrewsbury.
Tillett, Jacob Henry	John Rising Staff, Norwich
Turner, William Cullen	William Ormond, Wantage, co. Berks.
Tuson, Henry, the younger	Henry Tuson, Northover, Somerset.
Twining, Daniel	Theed Pearse, the younger, Bedford.
Twisden, Thomas Edward	James Partridge, Tiverton, Devon.
Watson, George Henry	Thomas Hodson, Castlegate, city of York.
Wight, Thomas	William Robinson, Dudley.
Williams, Edward	Peter Warburton, St. Owen's Street, Hereford.
Williams, Lewis Walter	Ambrose Clare, Frederick's Place, Old Jewry, and 5, Broad Street Buildings.
Worsley, Jonathan	Thomas Cartew, Woodbridge, Suffolk.
Yetts, Joseph Musket	Nathaniel Palmer, Great Yarmouth ; assigned to Robert Jackson, 41, Bedford Row.

## MISCELLANEA.

## ANECDOTE OF THE LATE MR. JUSTICE GASELEE.

In early days, together with Mr. L., a respectable gentleman then residing in Holborn, Mr. Gaselee was a member of a club of "Bachelors," who, as they got married, were, as a matter of course, expelled the society. One day Mr. Gaselee and his friend were conversing upon their future prospects in life, when the latter offered to bet a guinea to a hundred that the former would one day be called to the bench. Young Gaselee, (then a student) not having the most distant idea of such an event, readily accepted the guinea from Mr. L., at the same time agreeing to pay one hundred, should the prognostic become reality. Several years before Mr. Gaselee was "called," (or promoted to the bench) his friend Mr. L. had been "gathered to his fathers;" but, remembering his obligation, Mr. G. ascertained who were the executors of the will to his friend ; the result of which was, that he found they were also defunct, and that they were succeeded by Mr. Shelton, the Coroner for the city of London, and Clerk of the Arraigns at the Old Bailey Sessions. Shortly after, being at dinner at the Sessions House, Mr. Justice Gaselee said—“Mr. Shel-

ton, I have one hundred guineas to pay into your hands ;” at the same time detailing how the obligation arose. Years before this communication, Mr. Shelton had finally closed his executorship, but he received the one hundred guineas, and resumed his labours ; and this unexpected windfall was divided between sixteen relatives of the deceased Mr. L.—*Gent. Mag. for September 1839.*

## “ELLENBOROUGH.”

The adoption of this title by Sir Edward Law, arose from a singular circumstance. The late Bishop of Carlisle and his lady were staying with Mr. Christian, afterwards Mr. Christian Kirwin, at a time when the lady was very near her confinement : she took a drive one day for a few miles in the neighbourhood, when she was suddenly taken ill, and it became necessary to remove her to the nearest house. This proved to be a cottage in the village of Elborough or Ellenborough, where she was in a very short time delivered of a son, who was afterwards christened Edward. The hospitable cottagers were rewarded with an annuity, and when Sir Edward Law was to be advanced to the peerage, he chose the title of Lord Ellenborough.

## UN-COMMON LAW RHYMES!

All hail, Twenty-fourth of October !  
 Let each that is clerical sing ;  
 Vacation's dull winter is over,  
 Thou return'st like the goddess of spring !

Inglorious ! though some are now mourning  
 Fleet hours that have passed in woman's  
 Sweet presence—and sullenly turning  
 To attending at chambers on summons.

Or those who have perilled their necks,  
 O'ercome by the joys of the chase,  
 Who turn with no pleasure their pages of "*lex*,"  
 . Indeed I must pity their case.

That magical word of " proceedings,"  
 With a client substantial and willing,  
 And all the sweet mystery of pleadings,  
 Far—far above cooing and billing.

There's that in a sweet *writ of summons*,  
 There is no accounting for taste,  
 More dear than the smile that is woman's,  
 When upon me it rests not at " laste."

And then we've the *declaration*,  
 What poetry is in that word !  
 To the sex, some make their oration ;  
 Mine shall be *filed* and not heard !

Who can say that law has no feeling ?  
 Why, it *rules a defendant to plead*.  
 Nay, further—*demands* it, revealing  
 The strength of its wish to concede.

Learned arguments oft have been writ,  
 No doubt for our edification ;  
 But none may compare with the wit  
 Of a legal conversation.

Quick *rejoinder* now follows *reply*,  
 If you think your friend's law is mistaken,  
 There's no breach of the peace—no crack in  
 the eye,—

Vide Dodd's Abridgment of Bacon.

We come to the friendly *demurrer*,  
 And then by the aid of the bench,  
 Our anger is softened to sorrow,—  
 Oh ! had it that power with a wench !

Should haply that knightly train,  
*Sar-rejoinders, sur-rebutters* succeed,  
 (A chivalry bold, whose custom of old,  
 'Stead of foes made their clients to bleed.)

In bringing to *issue* the facts,  
 Intrigued is the stately *record* ;  
 Now think of the jury ! I just ax  
 Can any one fail to be stirred ?

And then the cause down at the 'sizes  
 Is called on—the jury all sworn—  
 And our eloquent counsel arises  
 With contending emotions all torn.

A few moments—the climax is passed,  
 A verdict for plaintiff is given ;  
 Said I passed ? I am lax—the costs are to tax—  
 Received—I am rested in heaven !

Then hail, Twenty-fourth of October !  
 Let each that is clerical sing ;  
 Vacation's dull winter is over,  
 Thou return'st like the goddess of spring !

## LIST OF NEW PUBLICATIONS.

The Legal Almanac, Remembrancer and Diary, for 1840. Price 4s.

A Manual for Articled Clerks : containing Courses of Reading, and all the Questions at the Examinations, from their establishment in 1836, to Trinity Term 1839. Third Edition, price 8s.

All the New Rules, from Michaelmas Term, 1 W. 4, to Hilary Vacation, 2 Vict. ; and an Appendix of Statutes of general reference in relation to Pleading and Practice; with Notes. Fourth Edition. By John Jervis, Esq., Barrister at Law, with a Patent of Precedence. Price 16s bds.

The Poor Law Amendment Acts : with Explanatory and Practical Notes; also an Introduction and Appendix; with Forms and the Commissioners' Rules, and Remarks upon them. By S. R. Bosanquet, Esq., of the Inner Temple, Barrister at Law. Price 9s. bds.

## INCORPORATED LAW SOCIETY.

## MEMBERS ADMITTED.

September, October, and November, 1839.

Thomas Loughborough, 23, Austin Friars.

Charles Gwillim Jones, Gray's Inn Square.

John Dutton Price, Lincoln's Inn.

Henry De Jersey, Aldersgate Street.

Chester Cheston, Raymond Buildings.

Robert Burleigh Sewell, Newport, in the Isle of Wight.

Henry Ettrick Coulthurst, New Inn.

Charles Spencer Owen, Chancery Lane.

## MASTERS EXTRAORDINARY IN CHANCERY.

Kingdom, Joseph Francis, Barnstaple, Devon.  
 Nov. 8.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22d October to 22d November, 1839, both inclusive, with dates when gazetted.

Strangwayes, D'Arcy, and Holden Walker, [no residence gazetted,] Attorneys and Solicitors. Oct. 22.

Helder, George, and Wm. Helder, Clement's Inn, Attorneys and Solicitors. Oct. 22.

Allford, Wm. Naish, and Thomas Warren Kempthorne, Sherbourne, Dorset, Attorneys and Solicitors. Oct. 28.

Ford, Richard, and Harwood Thomas, Shrewsbury, Attorneys and Solicitors. Nov. 5.

Palfreyman, Luke, and Charles William Bingley, Sheffield, York, Attorneys, Solicitors, and Conveyancers. Nov. 8.

Hopwood, Stephen Spindler, and Woolley Foster, Chancery Lane, Attorneys. Nov. 19.

## BANKRUPTCIES SUPERSEDED.

From 22d October to 22d November, 1839, both inclusive, with dates when gazetted.

Kent, Samuel, Salford, Lancaster, Victualler. Oct. 25.

Boam, Wm., Buxton, Derby, Draper. Oct. 29.

Roebuck, William Leeds, York, Stuff and Fancy Merchant. Nov. 5.  
 Morgan, James Williams, John Morgan, and Thomas Morgan, Glasbury, Radnor, Woolstaplers. Nov. 8.  
 Glover, John, Stafford, Painter, Plumber and Glazier. Nov. 15.  
 Elkins, William, Oxford Street, Bookseller. November 15.  
 Martin, James and Martha Hall, Waterloo Place, Limehouse, Linen Drapers. Nov. 15.  
 Rhodes, Joseph, Denton, Lancaster, Merchant. Nov. 19.

## BANKRUPTS.

From 22d October to 22d November, 1839, both inclusive, with dates when gazetted.

Archer, Robert, Queen Street, Cheapside, London, Wine Merchant. Edwards, Off. Ass.; Teague, Crown Court, Cheapside. Oct. 25.  
 Armstrong, Henry Wesley, Birmingham, Cooper Thorndike, Staple Inn; Wheeler, Birmingham. Nov. 1.  
 Aldrich, Henry, Ipswich, Suffolk, Corn and Coal Merchant. Jackaman, Ipswich; Jackaman, Bartlett's Buildings, Holborn. Nov. 8.  
 Blomfield, John, Lynn, Norfolk, Bookseller. Gibson, Off. Ass.; Crowder & Co., Mansion House Street. Oct. 22.  
 Bickley, Daniel, Devonport, Devon, Cabinet Maker. Williams & Co., Ely Place; Chapman, Devonport. Oct. 22.  
 Butler, Edward, Alcester, Warwick, Pellemonger and Woolstapler. Dangerfield, Pall Mall; Brinton, Kidderminster. Oct. 22.  
 Burch, Charles, Barnstaple, Devon, Auctioneer and Innkeeper. Rhodes & Co., Chancery Lane; Drake, Exeter. Oct. 29.  
 Bunn, Alfred, Eagle Lodge, Brompton, and of the Theatre Royal, Drury Lane, Printer, Publisher, and Music Seller. Whitmore, Off. Ass.; Lewis & Co., Ely Place. Nov. 5.  
 Bretherton, James, Litherland, and Wm. Harrison, of Crosby, Lancaster, Coach and Omnibus Proprietors. Holme & Co., New Inn; Bradshaw & Co., Liverpool.  
 Butterworth, Thomas, Royton, Lancaster, Cotton Spinner. Abbott & Co., Charlotte Street, Bedford Square; Messrs. Bennett, Manchester. Nov. 5.  
 Butterworth, Ashton, Scout Mill, near Mosley, Lancaster, Cotton Spinner. Abbott & Co., Charlotte Street, Bedford Square; Messrs. Bennett, Manchester. Nov. 5.  
 Bennett, Benjamin, Clement's Court, Milk Street, London, Commission Agent. Pennell, Off. Ass.; Tucker, Bank Chambers, Lothbury. Nov. 8.  
 Booth, John, Rawdon, Guiseley, York, Clothier. Wilson, Southampton Street, Bloomsbury; Payne & Co., Leeds. Nov. 15.  
 Batho, Nathaniel, Salford, Lancaster, Machine and Lathe and Tool Maker. Bower & Co., Chancery Lane; Barratt, jun., Manchester. Nov. 19.  
 Benassit, Emile, Lime Street, London, Wine Merchant. Clark, Off. Ass.; Wade, Frederick's Place, Old Jewry. Nov. 22.  
 Curtis, John Harrison, Soho Square, Bookseller. Pennell, Off. Ass.; Robson, Clifford's Inn. Oct. 29.  
 Coxhead, Samuel, Westminster Bridge Road, Surrey, Oil and Colourman. Green, Off. Ass.; Messrs. Davies, Coleman Street. Nov. 1.  
 Cowing, Matthew, Haydon Bridge, Warden, Nor-

thumberland, Innkeeper. Bell & Co., Bow Church Yard; Carrick & Co., Brampton, Cumberland. Nov. 1.  
 Crowther, Benjamin, Mirfield, York, Maltster. Van Sandau & Co., Old Jewry; Jacomb & Co., Huddersfield. Nov. 8.  
 Cox, Thomas, Birmingham, Lamp Manufacturer and Glass Cutter. Burfoot & Co., Temple; Page, Birmingham. Nov. 8.  
 Coates, Thomas, and Wm. Coates, Carnaby Street, Carnaby Market, and Park Street, Grosvenor Square, Builders. Graham, Off. Ass.; Foley, Solicitor, [no residence gazetted.] Nov. 12.  
 Cowderoy, William, Bell Street, Edgware Road, Horse Dealer. Lackington, Off. Ass.; Carlton, Chancery Lane. Nov. 19.  
 Davis, Nathaniel, Westerham, Kent, Innkeeper and Upholsterer. Lackington, Off. Ass.; Newington & Co., Tunbridge; Stevens & Co., Queen Street, Cheapside. Oct. 25.  
 Dear, John Cox, High Street, St. Mary-le-Bone, Ironmonger. Green, Off. Ass.; Bicknell, Manchester Street, Manchester Square. Nov. 22.  
 Ebsworth, Henry James, and Charles Ebsworth, Coleman Street, London, Wool Brokers. Alsager, Off. Ass.; Coe & Co., Pancras Lane, Bucklersbury. Nov. 22.  
 Francis, William, Birmingham, Woollen Draper. Abbott, Off. Ass.; Turner & Co., Basing Lane. Oct. 29.  
 Fern, Matthew, Leamington Priors, Warwick, Plasterer. Patterson & Co., Leamington Priors; Hall, New Boswell Court. Nov. 8.  
 Gorton, Joseph, Lichfield, Builder. Broughton, Falcon Square; Baylis, Wednesbury. Nov. 1.  
 Gardiner, William, Wokingham, Berks, Grocer. Graham, Off. Ass.; Sturkey, Wellington Street, Southwark. Nov. 5.  
 Gordon, Louisa Elizabeth, Dean's Place, South Lambeth, Surrey, Bookseller and Publisher. Edwards, Off. Ass.; Low, Upper Gloucester Place, Regent's Park. Nov. 8.  
 Groombridge, Henry, Bermondsey, New Road, Surrey, Carpenter and Builder. Groom, Off. Ass.; Quallitt & Co., Prospect Row, Bermondsey. Nov. 12.  
 Garman, Henry Vincent, Coborn Terrace, Bow Road, Middlesex, Apothecary, Chemist, and Druggist. Abbott, Off. Ass.; Cooke & Co., New Inn. Nov. 16.  
 Gittins, Ann, and John Cartwright, Shrewsbury, Salop, Ironmongers. Vincent & Co., Temple; Harper & Co., Whitchurch. Nov. 8.  
 Guy, Arthur, and Losco Dakin, Manchester, Fustian Manufacturers. Norris & Co., Bartlett's Buildings, Holborn; Norris, Manchester. Nov. 15.  
 Gazard, John, Bristol, Clothier and Commission Agent. Wiglesworth & Co., Gray's Inn Square; Latcham & Co., Bristol. Nov. 22.  
 Horsell, [query Howell? see Gas. Nov. 1] Wm. Jones, Aberporth, Cardigan, Malster. George, Cardigan. Oct. 22.  
 Hutchings, Henry Peter, Hastings, Sussex, Hotel Keeper. Briggs, Lewes; Faithfull, King's Road, Bedford Row. Oct. 22.  
 Haxworth, John, Sheffield, York, Surgeon and Apothecary. Capes & Co., Bedford Row; Copeland, Sheffield. Oct. 29.  
 Hamilton, Joseph, and William Henry Hamilton, Manchester, Calico Printers. Winstanley, Manchester; Milne & Co., Temple. Oct. 29.  
 Howell, William Jones, Aberporth, Cardigan, Malster. George, Cardigan. Nov. 1.  
 Holmes, Anthony, Heap within Bury, Lancaster,

- Cotton Spinner. *Clarke & Co.*, Lincoln's Inn Fields ; Messrs. *Grundy*, Bury. Nov. 12.
- Hayman**, Henry White, Liverpool, Merchant. *Holme & Co.*, New Inn ; *Booker*, Liverpool. Nov. 12.
- Hills**, Osborn, Bow, Middlesex, Grocer. *Abbott*, Off. Ass. ; *Bell & Co.*, Bow Church Yard. Nov. 15.
- Hill**, William, Bridge Street, Lambeth, Surrey, Ironmonger. *Green*, Off. Ass. ; *Holmer*, Bridge Street, Southwark. Nov. 15.
- Hooper**, Edward Cooper, Great Russell Street, Bloomsbury, Commission Agent. *Belcher*, Off. Ass. ; *Clarke & Co.*, Staple Inn. Nov. 19.
- Hall**, Henry, Lamb's Conduit Street, Ironmonger. *Johnson*, Off. Ass. ; *Clowes & Co.*, King's Bench Walk. Nov. 19.
- Hayward**, William, Winchester, Hants, Tailor and Draper. *Warne*, Leadenhall Street ; *Bridger & Co.*, Winchester. Nov. 19.
- Irving**, James, and Thomas Bamber, Preston, Lancaster, Wine and Spirit Merchants. *Adlington & Co.*, Bedford Row ; *Messrs. Ascroft*, Preston. Nov. 1.
- James**, William, Malinslee, Dawley, Salop, Coal Merchant. *Capes & Co.*, Bedford Row ; *Glover*, Shifnal. Oct. 22.
- Johnston**, Thomas, jun., Lewes, Sussex, Dealer in Horses ; *Messrs. Blaker*, Lewes ; *Sowton*, Great James Street. Oct. 29.
- James**, Louis, Little Tower Street, London, Coal Merchant. *Belcher*, Off. Ass. ; *Teuton*, Cook's Court, Chancery Lane. Nov. 1.
- Johnson**, Thomas, Liverpool, Coach Proprietor. *Brown*, Liverpool ; *Adlington & Co.*, Bedford Row. Nov. 12.
- James**, Charles, sen. ; and Herbert George James, late of Lower Thames Street, now of Mincing Lane, London, Porter and Ale Merchants. *Lackington*, Off. Ass. ; *Cook & Co.*, New Inn. Nov. 19.
- Kieffer**, John Michael David, Southampton Street, Covent Garden, and of Charles Street, Covent Garden, also of Berkeley Street, Clerkenwell, Middlesex, and also of Petter Lane, London, Baker. *Johnson*, Off. Ass. ; *Poussett & Co.*, Sambrook Court, Basinghall Street. Oct. 25.
- Killick**, Wm., jun., Great Russell Street, Bloomsbury, Hosier and Taylor. *Edwards*, Off. Ass. ; *Myatt*, Birch Lane, Cornhill. Nov. 19.
- Keighley**, David, Rawdon, Guiseley, York, Cloth Manufacturer. *Wilson*, Southampton Street, Bloomsbury ; *Payne, & Co.*, Leeds. Nov. 19.
- Kington**, Wm., Clifton, Bristol, Builder. *White & Co.*, Bedford Row ; *Brittan or Short*, Bristol. Nov. 22.
- Long**, Elizabeth, Tavistock, Devon, Grocer and Tea Dealer. *Surr*, Lombard Street ; *Lockyer, & Co.*, Plymouth. Oct. 22.
- Lasalle**, Joseph, Muscovy Court, Trinity Square, London, Merchant. *Milne, & Co.*, Temple ; *Jesse*, Manchester. Oct. 25.
- Lenox**, Samuel, Liverpool, Sail Maker. *Vincent & Co.*, Temple ; *Brabner & Co.*, Liverpool. Nov. 5.
- Lucas**, Henry, Leominster, Hereford, Dealer in Wines and Spirituous Liquors, and Hatter. *Smith*, Chancery Lane ; *Hammond*, Leominster. Nov. 8.
- Lucas**, John Legge, Willenhall, Stafford, Druggist and Grocer. *Dalby*, Tonbridge Street, New Road, and Birmingham. Nov. 15.
- Martin**, Henry, Liverpool, Wine and Porter Dealer. *Evans*, Liverpool ; *Oliver*, Old Jewry. Oct. 22.
- Morris**, Wm. Francis, Chester Wharf, Pimlico, Coal Merchant. *Johnson*, Off. Ass. ; *Ashurst, & Co.*, Cheapside. Nov. 1.
- Moss**, John, and Joseph Moss, Smedley near Manchester, Dyers. *Kershaw, and Co.*, Manchester ; *Johnson, & Co.*, Temple, Nov. 5.
- Milne**, Wm., John, and Robert Morrison, Percy Street, Rathbone Place, Middlesex, and of Doncaster, York, Piano Forte Makers. *Gibson*, Off. Ass. ; *Moss, & Co.*, Queen Street, Cheapside. Nov. 12.
- Machin**, John Morgan, High Holborn, Tavern and Hotel Keeper. *Clark*, Off. Ass. ; *Hare*, Lincoln's Inn Fields. Oct. 22.
- Masson**, John, Lime Street Square, London, Merchant. *Alsager*, Off. Ass. ; *Wood & Co.*, Corbet's Court, Gracechurch Street. Nov. 12.
- M'Evoy**, John Neasbitt, Birmingham, Hook-and-Eye Manufacturer. *Newton & Co.*, Gray's Inn ; *Smith or Dolphin*, Birmingham. Nov. 12.
- M'Donnell**, Thomas, Pall Mall, Boot Maker. *Whitmore*, Off. Ass. ; *Dickson*, Bucklersbury. Nov. 15.
- Man**, James, Brickhill Lane, Upper Thames Street, Wholesale Ironmonger and Copper Nail Manufacturer. *Cannan*, Off. Ass. ; *Desborough & Co.*, Siz Lane. Nov. 19.
- Moore**, John, Brighton, Sussex, and of Lincoln's Inn New Square, Middlesex, Lodging-house Keeper. *Faithfull*, King's Road, Bedford Row. Nov. 19.
- Moore**, John, Bath, Somerset, Mealman. *Pinnegar & Co.*, Gray's Inn Square ; *Dore*, Bath. Nov. 19.
- Marsh**, Robert, jun., St. Helen's, Lancaster, Chemist and Druggist, Grocer and Tea Dealer. *Barnes*, Great St. Helen's ; *Chester*, Staple Inn. Nov. 19.
- Maughan**, John, Percival Street, Clerkenwell, Hardwareman. *Graham*, Off. Ass. ; *Selby*, St. John Street Road, Clerkenwell. Nov. 22.
- Matthews**, Nicholas, Heaton Norris, Lancaster, Ironfounder. *Coppock*, Cleveland Row, St. James's ; *Coppock & Co.*, Stockport. Nov. 22.
- Mousley**, Thomas, Ellesmere, Salop, Surgeon and Apothecary. *Vincent & Co.*, King's Bench Walk, Temple ; *Harper & Co.*, Whitchurch. Nov. 22.
- Noke**, Mark, Maidenhead, Berks, Upholder. *Gibson*, Off. Ass. ; *Brown & Co.*, Commercial Sale Rooms, Mincing Lane. Nov. 1.
- Nicholl**, Joseph, Sowerby Bridge, Halifax, York, Worsted Spinner. *Jaques & Co.*, Ely Place ; *Hitchin & Co.*, Halifax. Nov. 5.
- Nicholl**, William, and Alexander Nicholl, Greetland, Halifax, York, Worsted Spinners. *Jaques & Co.*, Ely Place ; *Mitchell*, Halifax. Nov. 5.
- Noble**, John, Huddersfield, York, Draper and Tailor. *Abbott & Co.*, Charlotte Street, Bedford Square ; *Bennett*, Manchester. Nov. 8.
- Naylor**, Jeremiah, Heckmondwicke, York, Blanket Manufacturer. *Sadgrove*, Mark Lane ; *Harrup*, Leeds. Nov. 19.
- Nicholl**, Henry, Greetland, Halifax, York, Worsted Spinner. *Stocks & Co.*, Halifax ; *Jaques & Co.*, Ely Place, Holborn. Nov. 22.
- Oliver**, John, and James Oliver, Duke Street, St. James's, and Craven Place, Bayswater, Plumbers, Painters, and Glaziers. *Graham*, Off. Ass. ; *Allen & Co.*, Queen Street, Cheapside. Nov. 22.
- Phillips**, William, Stanford Rivers, Essex, Dealer. *Canian*, Off. Ass. ; *Munn*, Staple Inn. Oct. 29.
- Pennell**, George, James's Place, St. James's Street,

- Picture Dealer. *Turquand*, Off. Ass.; *Pocock*, Bartbolomew Close. Nov. 1.
- Perkins, Robert, Broadway, Westminster, Grocer. *Pennell*, Off. Ass.; *Hill*, Mark Lane. Nov. 1.
- Paul, Peter, sen., and Peter Paul, jun., Silver Street, Golden Square, Mahogany and Timber Merchants. *Lackington*, Off. Ass.; *Dean*, Essex Street, Strand. Nov. 1.
- Pacey, Robert, Alford, Lincoln, Ironmonger and Brazier. *Scott & Co.*, Lincoln's Inn Fields; *Bourne & Co.*, Alford. Nov. 5.
- Perry, Timothy, late of Golden Lane, London, now of Uxbridge, Middlesex, Clothes Salesman. *Cannan*, Off. Ass.; *King*, Tokenhouse Yard, Lothbury. Nov. 12.
- Potts, Henry, Newcastle-upon-Tyne, Publican. *Beckington*, Newcastle; *Dunn & Co.*, Raymond Buildings, Gray's Inn. Nov. 12.
- Prescott, John, Leeds, York, Shoe Maker. *Bastye & Co.*, Chancery Lane; *Leadbeater*, Mirfield, near Dewsbury. Nov. 15.
- Parry, Henry, Birmingham, Tailor and Draper. *Clarke & Co.*, Lincoln's Inn Fields; *Tyndall*, Birmingham. Nov. 15.
- Procter, Charles, Bridge Road, Lambeth, Surrey, Hotel Keeper. *Pennell*, Off. Ass.; *Murray*, London Street. Fenchurch Street. Nov. 19.
- Potts, John, New Mills, Derby, Engraver to Calico Printers. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Nov. 19.
- Potter, Michael, and John Lever, Manchester, Merchants and Commission Agents. *Slater & Co.*, Manchester; *Milne & Co.*, Temple. Nov. 22.
- Rudston, George, Kingston-upon-Hull and Newland, York, Woollen Draper. *Lightfoot & Co.*, Hull; *Walmsley & Co.*, Chancery Lane. Oct. 22.
- Richardson, Robert, Judd Street, New Road, Boot and Shoe Maker. *Green*, Off. Ass.; *Heath*, Charlotte Row, Mansion House. Oct. 29.
- Rogers, Edward Thomas, Woodford, Essex, Smith and Ironmonger. *Johnson*, Off. Ass.; *A'Beckett & Co.*, Golden Square. Nov. 5.
- Ross, Joseph, now of Halifax, York, but late of Horton, Bradford, York, Woolstapler and Worsted Manufacturer. *Jacques & Co.*, Ely Place; *Stocks & Co.*, Halifax. Nov. 8.
- Rowles, John, Leicester, Worsted Manufacturer. *Brown & Co.*, Leicester; *Holme & Co.*, New Inn. Nov. 12.
- Rolling, John, Alfreton, Derby, Ale and Porter Merchant. *Abbott & Co.*, Charlotte Street, Bedford Square; *Hall*, Alfreton. Nov. 15.
- Sheppard, John, Birmingham, Manufacturer of Plated Wares. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. Oct. 29.
- Swansborough, Robert, Grimsby, Lincoln, and Henry Oake, Ringwood, Southampton, carrying on business in Bread Street, London, as Warehousemen and Linen Drapers; and as Flax Merchants and Flax Dressers at Grimsby. *Belcher*, Off. Ass.; *Fox*, Finsbury Circus. Nov. 1.
- Sheppard, George, Thornton-le-Clay, York, Corn Dealer. *Wood*, York; *Richardson & Co.*, York. Nov. 1.
- Saville, Matthew, Stalybridge, Lancaster, Mercer and Draper. *Messrs. Sale*, Manchester; *Messrs. Baxter*, Lincoln's Inn Fields. Nov. 5.
- Shingles, John, Norwich, Innkeeper. *Clarke & Co.*, Lincoln's Inn Fields; *Beckwith & Co.*, Norwich. Nov. 5.
- Shelley, Adolphus Edward, formerly of Upper Ground Street, Blackfriars, Surrey, Coal Merchant, but now of Lower Halliford, Middlesex. *Green*, Off. Ass.; *Sherwood & Co.*, Dean Street, Southwark. Nov. 12.
- Smithers, William Heaves, jun., Brighton, Sussex, Printer. *Cornford*, Brighton; *Hore*, Series Street, Lincoln's Inn. Nov. 12.
- Stevens, John, Brighton, Sussex, Carpenter and Joiner. *Faithfull*, Brighton; *Faithfull*, King's Road, Bedford Row. Nov. 19.
- Storey, James Vaughan, Newcastle-upon-Tyne, Northumberland, Linen and Woollen Draper. *Messrs. Baxter's*, Lincoln's Inn Fields; *Sale & Co.*, Manchester, or *Crighton*, Newcastle-upon-Tyne. Nov. 19.
- Tarboton, Henry, Thorner, York, Corn Dealer. *Robinson & Co.*, Essex Street, Strand; *Ward & Son*, Leeds. Oct. 22.
- Truscott, James, Manchester, Share Broker. *Smith*, Chancery Lane; *Gilbard*, Devonport. Oct. 29.
- Tozer, John, Duke Street, Grosvenor Square, Carver and Gilder. *Gibson*, Off. Ass.; *Butler*, Young Street, Kensington. Nov. 19.
- Taylor, Thomas, Bolton-le-Moors, Lancaster, Builder. *Milne & Co.*, Temple; *Taylor*, Bolton-le-Moors. Nov. 19.
- Tombleson, William, Green Lanes, Stoke Newington, Middlesex, Tavern Keeper and Publican. *Johnson*, Off. Ass.; *Car*, Bucklersbury. Nov. 22.
- Thwaites, George, Devonshire Street, Portland Road, Cabinet Maker. *Clark*, Off. Ass.; *Patten*, Hatton Garden. Nov. 22.
- Taylor, Samuel, Castle Street, Holborn, Hat Manufacturer. *Alsager*, Off. Ass.; *Stevens & Co.*, Queen Street, Cheapside. Nov. 22.
- Williams, John, Great Russell Street, Bloomsbury, Architectural Book Publisher. *Clark*, Off. Ass.; *Egan & Co.*, Essex Street, Strand. Nov. 8.
- Westwood, Joseph, Birmingham, Gun Maker. *Thorndike*, Staple Inn; *Wheeler*, Birmingham. Nov. 8.
- Waddell, William, Liverpool, Merchant and Ship Broker. *Holme & Co.*, New Inn; *Bradshaw & Co.*, Liverpool. Nov. 19.
- West, Richard, Fleet Street, London, Medicine Vender. *Groom*, Off. Ass.; *Ellins*, Cook's Court. Nov. 22.
- Wood, George, Manchester, Drysalter. *Prescott & Co.*, Manchester; *Hopwood & Co.*, Chancery Lane. Nov. 22.
- Waite, Robert, Barnard Castle, Durham, Grocer and Tallow Chandler. *Blake & Co.*, King's Road, Bedford Row; *Coulthard*, Barnard Castle. Nov. 22.

## PRICES OF STOCKS.

Tuesday, 26th November, 1839.

Bank Stock, div. 7 per Cent. - - - - -	178½ a 3
3 per Cent. Reduced - - - - -	89½ a ½ a ½ a ½
3 per Cent. Cons. Annuities, - - 90½ a ½ a ½ a ½ a ½	
3½ per Cent. Reduced Annuities, - - -	97½ a ½ a ½
New 3½ per Cent. Annuities, - 98½ a ½ a 9 a 8½ a ½	
Long Annuities, expire 5th Jan. 1860 - -	13½ a ½
Annuities for 30 yrs., exp. 10th Oct. 1859 - -	13½
India Bonds, 3 per Cent. - - - - -	7s. dis.
3 per Cent. Cons. for Acct., 27th Nov. - -	90½ a ½
Exchequer Bills, 1000l. a 1½d.	
	6s. a 4s. a 7s. a 5s. a 7s. dis.

Ditto. 500l. a 1½d. - - - - - 5 a 3s. dis.  
 Ditto. Small, a 1½d. - 2s. a 3s. a 1s. a 4s. a 2s. dis.

# The Legal Observer.

SATURDAY, DECEMBER 7, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE SPECIAL COMMISSION.

A SPECIAL COMMISSION has been appointed to try the prisoners concerned in the recent disturbances in Monmouthshire. The Judges named in the Commission are Chief Justice Tindal, Mr. Baron Parke, and Mr. Justice Williams, and also Mr. Serjeant Ludlow, who commence their sittings on the 10th instant. Without prejudging the case in any way, it may be useful briefly to state the law relating to the offences alleged to have been committed. These consist of the highest crime in our calendar—high treason, and they seem more especially to come within that description of treason which is described in the great statute of treasons, 25 Edw. 3, c. 2, as the “levying war against our lord the king in his realm,” which has been repeatedly held to apply to a Queen Regnant as within the words of the act.<sup>a</sup>

The “levying war” need not be against the *person* of the king. There is a constructive levying of war, by which is meant, that the power or authority of the state is attempted to be taken out of the hands of the king, and usurped by force in defiance of the crown. The cases in which this constructive levying of war have taken place are not numerous. They are thus stated by Sir C. Wetherell, in his defence of Watson, in 1817:<sup>b</sup>—“There are not more than five or six before the Revolution. The first that is to be met with happened in the reign of Henry 8th, when Lord Coke was Attorney General: it was an insurrection for the purpose of enhancing and fixing a public rate of wages. The next case happened in the time of Queen Elizabeth: it was an armed force for the purpose of

throwing down all enclosures. In the reign of King Charles the First, there was *Bentstead's case*, which was a rising to destroy Laud, the Archbishop of Canterbury, for having advised the King to dissolve the Parliament. In a case in the time of Charles the Second, it was held that a destruction of all brothels with an armed force, came within this description. In another case in the same reign, the breaking open gaols and the release of all prisoners was held to come within the same rule. After the Revolution, came the case of *Dammaree and Purchas*, in 1709, which was a popular rising to destroy all meeting-houses.”

Next let us state of what the crime consists. Lord *Hale* says, “that in order to constitute a levying of war amounting to high treason, there must be a *species belli*. The assembling of many rioters in great numbers to do unlawful acts, if it be not *modo guerrino* or in *specie belli*, or if they have no military array, nor march or continue together in the posture of war, may make a great riot, yet doth not always amount to levying of war.<sup>c</sup> In *Messenger's case* the multitude were led by persons called captains, and had colours. The captain brandished a naked sword, and another flourished the colours; and *Hale*, in stating the point of this case in few words, describes it as an assembly *modo guerrino* for this purpose.<sup>d</sup> But perhaps the law on this point is most fully stated in *Kelyng*, in the shape of resolutions, which, at any rate, will probably be sufficient for our readers until the facts appear in a more authentic shape.

1. “That if several persons do agree to levy war, and some of them do actually

<sup>a</sup> 1 Hal. P. C. 101.

<sup>b</sup> 32 St. Tr. 432.

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<sup>c</sup> 1 Hal. P. C. 131.

<sup>d</sup> *Ibid.* 153.

appear in arms, and others do not, this is an actual levying of war in all of them, as well those who were not in arms, as those who were, if they be proved to be of the plot with them who did actually appear in arms; for there are no accessories in treason, and therefore all that are in the conspiracy are equally guilty. “In the next place, we being informed that though there was a conspiracy to raise war in the North Riding of Yorkshire, as well as the West Riding, where some did actually appear in arms; yet it could not be proved that those in the North Riding did agree to the rising that was in the West Riding, or that they knew anything of it, and so would not be within the first resolution. And thereupon considering the new statute made the 13 Car. 2, for the safety of the king’s person, which maketh the conspiracy compassing and intending to raise war to be high treason, in case they express or declare such imaginations, intentions, &c. by printing, writing, preaching, or malicious and advised speaking; and upon that act it was agreed:—

2. That if one be indicted for imagining or intending to levy war, there must be some overt act laid in the indictment to prove such imagination, as there is at this day in indictments for compassing and imagining the king’s death; and it was conceived that no overt act could be laid to make it treason within that statute, but one of those which are named in that statute, namely, printing, writing, preaching, or malicious and advised speaking, and we were informed that no printing, writing, or preaching, could be proved, and it would be impossible to lay such words as could be fastened on them, and to prove that they spoke them; but in general we were informed that their consulting and meeting together, and agreeing to raise war would be proved; and thereupon it was resolved that the best and safest way to proceed against them was to indict them for compassing and imagining the death of the king, and to lay the meeting, consulting, and agreeing to levy war as one overt-act, and the actual levying war as another overt act, and so proceed upon the statute 25 Edw. 3.

3. For it was resolved and agreed by all now, as it was before it was in Tony’s case, and Sir H. Vane’s case, that the meeting and consulting to levy war is an overt-act to prove the compassing the king’s death, within the statute of 25 Edw. 3. Although the consulting to levy war is not actual levying within the statute, and so cannot be indicted thereupon for that treason of levy-

ing war. Yet if they be indicted for the treason of compassing and imagining the king’s death, that consulting to levy war is an overt-act to prove that treason, although Co. Pl. Cor. 14, delivers an opinion against this.”

## CHANCERY REFORM.

### No. III.

#### THE MASTERS’ OFFICES.

In pursuance of our investigation of the chief causes of the defective state of the Court of Chancery, we now beg to direct attention to the Masters’ Offices. We hear from several quarters complaints of the inconvenience and delays occurring in them. Various causes are assigned for the evil, and different remedies suggested for its removal.

Between the hearing of a cause and its coming on for further directions on the masters’ report, a long time elapses—frequently many years. There may be some delay in settling and completing the decree before the case is introduced into the master’s office, and some delay by solicitors who do not urge the matter forward; but the papers being once fairly before the master, we presume he is somewhat responsible for the slow progress which is generally made in his office.

One of the causes of delay, we conceive, may be traced to the inconvenient practice of granting warrants for a single hour or two only, instead of a sufficient number of hours to make effective progress in, or complete the inquiry. It may be that different parties are pressing for such portion of time as can be obtained; but we take it to be the business of the master to establish a course of proceeding that will ultimately be the most beneficial and expeditious to the suitors in general whose cases are under his care. By the time a case is opened, and the points partly discussed, the hour or two hours have expired, and the parties in the next warrant make their appearance; and then, a week or two afterwards, the matter is resumed, partially repeated, and again interrupted. We consider the master as a professional arbitrator, who may make his own arrangements for the most convenient and satisfactory discharge of his quasi-judicial duties, and in the shortest practicable time.

But then it may be said there is too much business in the master’s office to be

properly disposed of with greater speed than at present. There is the same number of masters that there was when the business was of one tenth the magnitude, and it is suggested that the number should be increased. We think, however, that no more should be appointed until all other means of despatch have been tried and found wanting.

Let us look, then, at the aid which the master receives from his *clerks*. Exclusive of the copying clerks, we think that there should certainly be an additional clerk in each office. Whether they should be of equal rank, and each take a share in all the business of the office, may be questionable. The better course perhaps, at first, will be, to let the present clerk be considered the *principal* clerk, and let him take all the special references, and let the new assistant clerk take the ordinary cases. The latter, of course, form the more numerous class, and if, from the readiness with which they might be disposed of, the assistant clerk got through his labours, he might be called in aid of the other more heavy cases. We apprehend that many matters which could be dispatched in the course of a few weeks, hang over for months in consequence of the principal clerk being pre-occupied with weightier causes, which he cannot be called upon to lay aside.

With respect to the duties of the master, it is well known that the principal clerk is enabled to relieve him of a large mass of details, and another efficient clerk would still further relieve the master, and enable him to devote more time to the weightier points of business, and to the general superintendance of the causes in progress. It is thus probable that no additional masters would be requisite. The chief and assistant clerks having been brought up in the business of the Masters' Office, or having practised as solicitors and become well acquainted with the details of Chancery suits, would be competent to settle all ordinary questions, subject, if the parties desired it, to the opinion of the master on any disputed points.

So much as to the progress of inquiries in the Master's Office. When the inquiry has been completed, then comes the preparation of the report. A report, whether special or general, in many instances, will occupy the clerk a considerable time to prepare correctly, especially where the papers are very voluminous and the subjects of inquiry complicated. The more important class of

reports might be prepared by the chief clerk and the rest by the assistant clerk, and thus this branch of business would be speedily reduced to its proper limits.

With submission to the masters, they might much expedite the progress of the causes referred to them, by going over from time to time the list of references, and ascertaining the grounds of delay; and by pressing on the cases that it might be practicable to complete, the office would be relieved of the confusion which now arises from a multiplicity of small matters; and the great ones would make regular progress, and ultimately no arrear be permitted to accrue.

These are the practical suggestions which occur to us for the improvement of the Master's Office. There are some other points connected with this subject which we shall shortly examine,—as whether the office should not be an open Court;—whether there should not be a regular paper of matters before it, which should be disposed of in regular order;—whether this court should be composed of a single master or three masters sitting together. But the consideration of these matters would lead us into a wider discussion than we have at present room for.

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THE  
NEW COMMISSION FOR INQUIRY  
INTO THE BANKRUPTCY LAWS.

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FOR many years we have been humble labourers in the cause of bankruptcy reform, and we have done our best to obtain an efficient administration of this important branch of the law. From the first institution of the present Court of Bankruptcy, we endeavoured to shew that it would never satisfy the real wants of the profession and the public—that it was not the required reform—that it had within itself the seeds of its own destruction. We therefore, by every means in our power, conscientiously opposed its establishment, as our past pages, if any one chuse to peruse them, will abundantly show. We were preparing to bring this subject again under public notice, when we found that a commission had been appointed by the Lord Chancellor to inquire into the whole subject of the administration of justice in bankruptcy. We had for some months previous heard rumours of some such step; and we have awaited its appearance with much expectation. The Commissioners appointed are: Mr. Justice Erskine, still the Chief Judge of the Court of Bankruptcy;

Mr. Evans; Mr. Fonblanque; Mr. Holroyd,—all commissioners of the same Court; the only other lawyer on the commission being Mr. Law, the Commissioner of the Insolvent Debtor's Court. The lay members of the commission are Mr. W. Crawfurd, M. P., Mr. B. Hawes, M. P., Mr. Wynn Ellis, M. P., and Mr. H. Palmer, Mr. J. A. Hankey, and Mr. C. J. Glyn. The Commissioners are authorised "to inquire into the present state of the laws relating to bankruptcy and insolvent debtors, and the administration thereof; and whether it be expedient to make any alterations therein; and particularly whether the several Courts by which they are now administered may not be beneficially united, or so arranged as to co-operate with and assist each other, and by what means the full benefit of such laws may be secured, and the better administration thereof provided for in the country districts." We shall take occasion shortly to renew the consideration of this important new law commission.

#### TERMS AND RETURNS FOR 1840.

By the 11 Geo. 4, & 1 W. 4, c. 70, s. 6, under which the Terms are fixed, it is enacted, that "Easter Term shall begin on the 15th day of April and end on the 8th day of May; and if the whole or any number of the days intervening between the Thursday before and the Wednesday after Easter-day shall fall within Easter Term, there shall be no Sittings in Banc on any of such intervening days, but the Term shall, in such case, be prolonged and continue for such number of *days of business* as shall be equal to the number of the intervening days before mentioned, exclusive of Easter-day; and the commencement of the ensuing Trinity Term shall in such case be postponed, and its continuance prolonged for an equal number of *days of business*."

In the next year, Good Friday and the following Saturday, and Easter Monday and Tuesday, falling in Term time, will be lost as "days of business," and therefore the Term must be prolonged, by adding Saturday the 9th, Monday the 11th, Tuesday the 12th, and Wednesday the 13th May.—*omitting Sunday as no day of business.*

It is worth noticing, however, that by the rules of Hilary Term, 2 W. 4, sec. 8, it was ordered (after the passing of the 11 Geo. 4, and 1 W. 4, c. 70,) that, "in all cases in which any particular number of

days, not expressed to be *clear* days, is prescribed by the rules or practice of the Courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also:" And 1 W. 4, c. 3, s. 1, enacts, that "in case any of the days between the Thursday before and the Wednesday next after Easter shall fall within Easter Term, then such days shall be deemed and taken to be a part of such Term, although there shall be no sittings in Banc on any of such intervening days."

But it seems clear that although the four Holidays form part of the Term, the Court does not sit, and they are not "days of business." It is singular that all the almanacs we have seen (many in eminent repute) are erroneous in this respect. We discovered the error after a few copies were published of the Legal Almanac. The mistake has been corrected, and the erroneous copies will be exchanged by the Publisher.

Trinity Term, according to the same calculation, will commence on the 27th, instead of the 26th May, and end on the 17th instead of the 16th June. The Sittings after Easter Term will end the 20th May, and the Sittings after Trinity the 15th July.\*

#### CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

##### No. XVI. REAL ESTATES LIABILITY ACT.

2 & 3 Vict., c. 60.

*An Act to explain and extend the provisions of an Act passed in the First Year of His late Majesty King William the Fourth, intituled "An act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate."*

[17th August 1839.]

11 G. 4, & 1 W. 4, c. 47. *Recited provisions of 11 G. 4, & 1 W. 4, c. 47, extended to authorize mortgages as well as sales of estates.*—Whereas by an act passed in the first year of the reign of his late Majesty King William the fourth, intituled "An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate," it was (amongst other things) enacted, that where any suit had been or should be instituted in any court of equity for the payment of any debts of

\* We find that in 1835, when the same Holidays occurred in Easter Term, the Courts sat on the 13th May as the last day of that Term, and on the 17th June as the last day of Trinity.

any person or persons deceased, to which their heir or heirs, devisee or devisees might be subject or liable, and such court of equity should decree the estates liable to such debts or any of them to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof could not, as the law then stood, be compelled, in every such case such Court should direct, and if necessary compel, such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said Court should think proper and direct; and every such infant should make such conveyance accordingly, and every such conveyance should be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants was or were at the time of executing the same of the full age of twenty-one years; and it was also thereby further enacted, that where any lands, tenements, or hereditaments had been or should be devised in settlement by any person or persons whose estate under the said act now in recital or by law, or by his or their will or wills, should be liable to the payment of any of his or their debts, and by such devise should be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over which might not be vested, or might be vested in some person or persons from whom a conveyance or other assurance of the same could not be obtained, or by way of executory devise, and a decree should be made for the sale thereof for the payment of such debts or any of them, it should be lawful for the Court by whom such decree should be made to direct any such tenant for life or other person having a limited interest, or the first executors devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said Court should think proper; and every such conveyance, release, surrender, assignment, or other assurance should be as effectual as if the person who should make and execute the same were seised or possessed of the fee simple or other whole estate so to be sold: And whereas doubts are entertained whether the herein-before recited provisions of the said act extend to authorize Courts of Equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, or of lands, tenements, or hereditaments so devised in settlement as aforesaid, and also to authorize such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executors devisee as aforesaid, is an infant; and it is expedient that the said provisions of the said act should be so extended, and that further provision should be made in relation thereto in manner herein-after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal,

and commons, in this present parliament assembled, and by the authority of the same, that the said herein-before recited provisions of the said act shall extend and the same are hereby extended to authorize Courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, and also of lands, tenements, or hereditaments so devised in settlement as aforesaid, and to authorize such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executors devisee as aforesaid, is an infant.

1. *Surplus of money arising from such sale or mortgage to descend in the same manner as the estates so sold or mortgaged would have.*—And be it further enacted, that when any sale or mortgage shall be made in pursuance of the said recited act or this act, the surplus (if any) of the money raised by such sale or mortgage, which shall remain after answering the purposes for which the same shall have been raised, and defraying all reasonable costs and expences, shall be considered in all respects of the same nature, and descend or devolve in the same manner, as the estate, or the lands, tenements or hereditaments so sold or mortgaged, and shall belong to the same persons, be subject to the same limitations and provisions, and be applicable to the same purposes as such estate or such lands, tenements, or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

#### NOTES ON EQUITY.

##### THE JURISDICTION OF THE COURT OF CHANCERY IN THE COLONIES.

A VERY important extension of the jurisdiction of the Court of Chancery has recently been assumed over proceedings instituted in the colonies, to which we call our readers' attention, as likely to produce very interesting results. An injunction was granted on terms to restrain proceedings instituted in Demerara, to recover real estate there, and an order was made for a consigner and manager of the estate and produce, it appearing to the Court that there were many other questions between the parties connected with the estate, which could be more conveniently determined together in this country. This order was originally made by Lord Langdale, M. R.; and on an appeal it was confirmed by the Lord Chancellor. The judgment of the latter is given by our own Reporter, 18 L. O. 411, 414, and we are not aware of any other report. The judgment at the Rolls has been recently reported by Mr. Beavan, and it is fit that our readers should be in possession of it. We shall therefore extract the principal part of this judgment, referring to the report for the mode in which the decree was made.

The *Master of the Rolls*.—The defendants insist that the right to the land depends on the law of Holland, and ought to be determined

by the courts of Demerara, which are competent to decide upon the title, and give possession accordingly; and I should concur with the argument against this motion, which has been addressed to me on their behalf, if nothing more than an insulated question of title to land in Demerara were in litigation between these parties, or if that question were only affected by a case of election arising on the will and codicils of the testator, or by the alleged acquiescence in the testator's title, which is denied by the answer. But it does not appear to me that the matter in controversy between the parties can be decided by the determination of an insulated question of title to land in Demerara. The testator's property in Demerara consisted partly of land or immoveable property, and partly of cattle, implements, and other moveable property or personal estate. With respect to the Dutch law, as applicable to the property of persons married in Holland and domiciled there, no question has been raised in argument. The law of community prevails, if not excluded by ante-nuptial contract; and the *communio bonorum omnium* and the *communio quaestuum* extend to both real and personal estate—to moveable as well as to immoveable property. The law is so stated in the answers of the defendants, and they claim distinctly a moiety of the lands, and of all the rents and profits thereof, which were received by the testator subsequently to the death of his first wife; and they further insist upon their right to all such share of the testator's personal estate as they may be entitled to according to the laws and usages of Demerara. The claim to a share of the personal estate is advanced somewhat obscurely and cautiously, but in such a manner as to save any right which the defendants may, on any occasion, be entitled to substantiate; and I must understand the defendants to claim such right as the law of community would give them. With respect both to the land and the personality, the question will be, how far the law of community is affected by the circumstances that the husband and wife were, at the time of their marriage, English subjects, domiciled, or deemed to be domiciled, in England; that an ante-nuptial settlement, making provision for the wife, was made; that the marriage was, or must be deemed to have been, solemnized in England, and that the parties continued to be domiciled, or must be deemed to have been domiciled in England up to the time of their respective deaths. From the authorities which were cited at the bar, and from others to which I have been guided by the very valuable work of Mr. Burge,—a work containing extensive and accurate information which greatly facilitates the investigation of questions of this nature, and tends to the correct decision of the causes in which they arise—it appears, that the most eminent jurists have differed greatly in opinion upon the effect of such circumstances; and as to the extent to which the *les loco contractus*, and the law of the domicile of the parties ought to prevail. I do not think it necessary or proper to intamate any opinion upon the effect which these cir-

cumstances may have upon the title to the land; but whatever it may be, it cannot be precisely the same as that which the same circumstances may have upon the right to the personality. The claim of the defendant as regards the land, rests upon this: that according to the general law of all countries, the title to land depends upon the law of the country in which the land is situate. But according to the same general law, the title to personal estate depends upon the law of the country in which the owner is domiciled: and if, according to the arguments of the defendants, a domiciled Englishman, who is a married man, cannot purchase a plantation in Demerara, without making his wife partner or tenant in common with him in the land, it would not follow that she acquired any interest whatever in any personal estate, stock, implements, or effects which he might have purchased with the land or afterwards placed upon it. By the law of England, all the personal estate which Mr. Bunbury possessed or acquired during the life of his first wife was his own, and was not subject to any claim which she could have made to be partner or to hold in community with him, and if the general law is to govern this question, she had no claim to, or interest in the money with which he bought the estate, or the money by means of which he stocked and cultivated the plantations, or the cattle, implements, and effects which were upon the estate at the time of her death. The defendants, however, claim a share of the testator's personal estate (not indeed confining their claim to personal estate in Demerara); but they claim a share of the testator's personal estate by the law and usages of Holland; and I conceive that they must intend to raise the question, whether the law of Holland is or is not to prevail in this respect, and to contend for the affirmative. The defendants therefore claim the benefit of a species of partnership, and to be entitled to a share of the partnership property, consisting partly of real and partly of personal estate. By the general law, the real estate situate in Demerara, is subject to the law of Holland, and the personal estate, anywhere situate, is subject to the law of England. But the defendants insist that in this case both the real and personal estates are subject to the laws of Holland, and claim to be entitled to accounts of what is due to them accordingly. Out of this claim many considerations arise. Is the claim of the defendants to have any part of the testator's personal estate subjected to the law of community, a claim which is to be determined by the law of Holland, or would this Court be under any obligation to submit to the decision of any Dutch Court upon the subject? If no part of the personal estate be, or ever was, subject to the law of community, what effect would that circumstance have upon the question whether the land was subject to the law of community? Is it consistent with the law of community, independently of special contract, that only part of the property of the conjoints should be subject to it? and supposing it to be deter-

mined by the law of Holland that the land was subject to the law of community,—though, under the circumstances of the marriage and domicile, the personal estate was not, and consequently, that (considering the case as a partnership in the land) the whole purchase money was paid by one partner, and the whole expense of cultivation was defrayed by him,—would he or not have any just or equitable claim to be reimbursed his advances by the partners so unexpectedly forced upon him by the laws of Holland, and who are now demanding their share of the land? And if there be any such equitable claim, would effect be given to it as a lien on the land under the Dutch law, or would it be an equity only to be made available by the English law, and enforced *not in rem* by the law of Holland, but *in personam* by the jurisdiction which this Court has over the parties? These are, I am sorry to say, by no means all the questions which may have to be discussed; and it appears to me that the question as to the personal estate cannot be decided by the law of Holland alone; and that if a moiety of the land should, according to the laws of Holland, be decided to belong to the defendants, there may still be questions to be decided according to the principles of equity acted upon in this Court, before it can be determined that the defendants ought, in equity, to take for themselves the moiety of the land which may be adjudicated to them. If the real estate in Demerara is to be considered by the law of the colony as a partnership property, it is nevertheless partnership property belonging to English subjects. It must be dealt with in connexion with the other, if there be other partnership effects; and must be held subject to all just claims which may be made upon it; and then comes the question whether it would be just to permit the defendants to withdraw their alleged share of the land from the mass of the partnership property or from the estate of the testator, by a separate proceeding, which does not and cannot take into consideration all the questions which must be determined here before it can appear whether they have a clear equitable as well as legal title to the land which they claim. Under all these circumstances, having regard to the questions between the parties, to the accounts which must be taken for the purpose of giving effect to the claim of the defendants, if substantiated to any extent, and seeing that such accounts can only be taken here where the parties are, the ends of justice do appear to me to require that the defendants should not be permitted to proceed in Demerara to take possession of their alleged share of the land, and that the estate should, for the benefit of all parties, be protected by a manager and consignee till their rights are determined. But if possession be not taken, and no execution be sued out, there may be a convenience in permitting the defendants to proceed to make out their right to a share of the land, so far as to obtain judgment or sentence in their favor, if the law of the colony should entitle them to it. And the plaintiffs ought, I think, to consent

(as was done in *Bechford v. Kemb'e*, 1 Sim. & S. 7, to any order to be made in the suit in Demerara, which this Court shall at any time think reasonable.

#### RECEIVER.

A grantor of an annuity, secured by an equitable charge on certain lands which are subject to a prior charge, goes to reside abroad, but by his agent continues in the receipt of the rents and profits. Lord *Eldon*, C., on the application of the annuitant, will appoint a receiver, though the grantor has not appeared to the suit. "It is the unquestioned rule of equity," said his Lordship, "that an equitable incumbrancer who will take possession may have a receiver, care being taken at the same time that the order for the receiver shall not prevent any who have a better title to the possession from ousting him if they please. I do not see why the rights of the equitable mortgagee are to be taken away by the circumstance that the mortgagor has not entered an appearance, and cannot be compelled to enter an appearance." *Tansfield v. Irvine*, 2 Russ. 149. Sir *L. Shadwell*, V. C., has recently adopted the same practice. Mr. *Knight Bruce* for the plaintiff moved for a receiver against the defendant, who was out of the jurisdiction. The Vice Chancellor made the order. *Gibbins v. Muinwaring*, 9 Sim. 77.

#### MISJOINDER OF PLAINTIFFS.

In a case in which a point relating to the misjoinder of plaintiffs was argued, Lord *Langdale*, M. R., said, "There are cases in which, notwithstanding a misjoinder of plaintiff, the Court has permitted a decree to be made at the hearing. It has been done when it has appeared that justice could be done to all parties, notwithstanding the misjoinder." *Lambert v. Hutchinson*, 1 Bea. 277.

#### MODE OF EXAMINING ARTICLED CLERKS.

*To the Editor of the Legal Observer.*

Sir,

I THINK your correspondent "An Old Subscriber," p. 59, has really been unfortunate in his selection of a question upon which to hang the charge of severity against the examiners. He chose this one, "whether an infant can execute a cognovit?" It appears to me to suggest no difficulty but that which the most elementary knowledge would have solved. That instrument makes the infant appear by attorney. Now what can be more familiar to us, in a practical point of view, than that an infant must appear by guardian? It makes the infant state an account, but the law will not recognize it so as to bind the minor. *Trueman v. Hurst*, 1 T. R. 40, and *Ingledew v. Douglas*, 2 Stark R. 36; *Hedgley v. Holt*, 4 C. & P. 104. And further it prejudices the infant's right, a violation of a doctrine so indisputable as to have become almost an axiom. In

*Oliver v Woodroffe*, (decided by the Exchequer in Hilary Term last<sup>a</sup>) a cognovit given by an infant was set aside upon the grounds I have mentioned.

J. W. B.

Sir,

The letter which appears in your last number signed "An Old Subscriber," is very tempting, however unwilling one might be to take up the gauntlet, thus cavalierly thrown down; but I at least will refrain in this instance; for the gratuitous attack made upon the examiners cannot in the least degree injure them: they are far above it. The profession can judge whether all the questions which have from time to time been given, are not such that every gentleman who has been in a solicitors' office five years should be able to answer.

In my humble and sincere opinion the examiners are above all praise for their very honourable and eminent conduct.

Your correspondent will find his question relative to an infant executing a cognovit answered, by referring to the case of *Oliver v. Woodroffe*, 7 Dowl. 166.

From one who passed his examination a few days back.

W. B. D.

#### SHERIFFS' FEES.—POUNDAGE.

Sir,

I AM surprised at the opinion of "A Country Attorney" (at p. 55) that "the statute 28 Eliz. c. 4, is certainly in no part of it repealed." It is true that the 28 Eliz. is not included among the express repeals in the 1 Vict. c. 55; but surely no one can doubt that the statute of Victoria repeals the statute of Elizabeth. Sec. 2 of the 1 Vict. enacts, that it shall be lawful for sheriffs, or their officers concerned in the execution of process directed to sheriffs, to demand, take, and receive such fees, *and no more*, as shall from time to time be allowed by any officer of the several courts of law at Westminster, charged with the duty of taxing costs in such courts, under the sanction and authority of the judges of the said courts respectively; and s. 3. subjects to punishment as for a contempt any sheriff &c. who shall receive "any fee or fees, gratuity or reward *not allowed as aforesaid, or greater in amount than as allowed as aforesaid*" (i. e. by a taxing officer, under the judges' sanction.) Are not the judges then empowered to regulate all fees of sheriffs?—Certainly they are; and they have exercised that power by drawing up the new table (15 L. O. 153,) since amended (ib. 48<sup>2</sup>), which fixes the fees for ordinary duties, and gives "for any *duty* not therein provided for, such sum as one of the masters may upon special application allow."

As to whether the *punishment* ordained by the 28 Eliz. still continues:—it is observable that that punishment relates only to the fees appointed by the 28 Eliz.; moreover the 1 Vict. (reciting the expediency of providing a

summary remedy) gives a new punishment: and therefore it is clear to my mind that the punishment of the 28 Eliz. is abolished.

Your correspondent may rest satisfied that sheriffs and their officers who take any other fees than those allowed under the 1 Vic. will be, as they ought to be, punished in the manner directed by that act.

F. W. D.

#### PRE-PAYMENT ON GENERAL POST LETTERS EXCEEDING AN OUNCE.

THE following clause in the Gazette of 22d November, is necessary to be added to our extracts at p. 70, *ante*.

"That on all General Post letters posted within the United Kingdom or the said Islands, [Jersey, &c], but not including letters addressed to France, (which, with reference to existing treaties between his late Majesty King William the Fourth, or her present Majesty, and his Majesty the King of the French, are to be excepted) *if exceeding one ounce* in weight, the postage shall be payable by the sender at the time of posting the same; and if any such letter shall be posted without the postage being so *pre-paid*, there shall be taken, on every such letter, *double* the postage to which such letter would have been liable according to the several and respective progressive and additional rates and scale of weight hereinbefore mentioned; and in all other cases the rates of postage from time to time payable under this warrant, shall be paid, and payable, in the manner prescribed and directed by the said act of the first year of her present Majesty, cap. 34, sect. 2.

It is also necessary to add, that the rate of four pence on each half ounce, applies only to letters not exceeding *one ounce*, after which two rates are added on each ounce, without reference to the fractional parts. There appears to be considerable ingenuity in making as many distinctions as possible in the details.

"On every letter, not exceeding *half an ounce* in weight, there shall be charged and taken *one rate* of postage.

"On every letter exceeding *half an ounce*, and not exceeding *one ounce* in weight, there shall be charged and taken *two rates* of postage.

"On every letter exceeding *one ounce*, and not exceeding *two ounces* in weight, there shall be charged and taken *four rates* of postage.

"On every letter exceeding *two ounces*, and not exceeding *three ounces* in weight, there shall be charged and taken *six rates* of postage.

"And on every letter, exceeding *three ounces* and not exceeding *four ounces* in weight, there shall be charged and taken *eight rates* of postage; and for every ounce in weight above the weight of four ounces, there shall be charged and taken two additional rates of postage; and every fraction of an ounce, above the weight of four ounces, shall be charged as *one additional ounce*."

\* See 17 L. O. 431

## SELECTIONS FROM CORRESPONDENCE.

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### INHERITANCE ACT.

Sir,

As regards the question asked by your correspondent Y. Z., p. 59, *ante*, upon the Inheritance Act, 3 & 4 W. 4, c. 106, it appears to me that his case falls within the first canon of inheritance. Bla. Com. vol. 2, p. 208, which directs that "inheritances shall lineally descend to the issue of the person last actually seized in *instatum*," and is not affected by the new act; and the estate having descended from the father to the daughters as coparceners, the surviving daughter and the heir of the deceased are still parceners. Co. Litt. 164, 174. H. C.

[Our correspondent has answered some other letters, but he will observe that he has been anticipated. ED.]

### LAW LIBRARY FOR STUDENTS.

Sir,

I am encouraged by the assurance you have given at the conclusion of your last volume, of still continuing the practice which you have hitherto pursued so beneficially to the profession, of bringing forward whatever may promote their best interests, to address you upon a grievance, which, should it be remedied by your intercession, would, I think, materially add to the obligations you have already conferred upon the novices in the law.

I allude to the want of sufficient instruction by the means of a legal library. It seems to me strange that no such accommodation has been provided for our numerous body. There is no way of obtaining legal books without purchasing, and this, to some, is impossible by the want of means (and a person must be possessed of an exhaustless purse who can afford to purchase every desirable book that is published), while to others the prospect of a partnership might render that way unnecessary.

Could not this evil be remedied by a circulating library? or if objection to that plan should be made, is there any reason why the library of the Law Institution should not be rendered available to numbers who now are deprived of that benefit? For now by the early hour (ten) of closing that library, it is comparatively useless (for it is to be regretted that some practitioners still continue the odious system of evening attendance.) It is closed at the very time when clerks are relieved from the business of the day, and are able to employ themselves in reading. Why should it not continue open until the institution itself is closed? This would prove of very great advantage to students, without being, I presume, in any way inconvenient to the members. I may remind you of an example in the early ages, set by Charles V. of France, who, when he established the Royal Library at Paris, suspended lamps to burn at night for the convenience of those whose occupations would not allow them to employ themselves in study at other hours.

JUSTUS.

[A circulating Law Library was established several years ago by Mr. H. Butterworth, but, we presume, was not sufficiently encouraged. The libraries of the Inns Court are closed at four: that of the Law Institution is open from nine in the morning till ten at night, when the institution (though not the club-room) is closed. We think ten o'clock is late enough to remain at a public library; and after that time, or early in the morning, the student should read at home. He can surely afford to buy a few elementary works, and books of reference may be consulted within the usual hours. ED.]

### ABSENT AND UNSUCCESSFUL CANDIDATES.

Sir,

It appears by your valuable journal of the 23d November, that five gentlemen who had given notice for Michaelmas term did not attend to pass their examination; and as they were probably prevented by illness or other similar cause, it would be but justice to them to insert a list of their names, to prevent their being classed with the fourteen whose certificates were postponed; and it cannot be objected by the latter that this would be an invidious distinction, because they will be placed in no worse a position than if the five had attended to pass. You will, doubtless, as heretofore, publish a list of those who passed, and unless my suggestion be adopted, the lists will by many professional friends be compared, and the nineteen deficient names in the last list be confused.

LEX.

[Our correspondent labours under some misapprehension regarding the published lists. The names of persons applying to be *admitted* were alone given in the list for Michaelmas term; and that list includes many who had been previously examined; and it did not contain the names of those who gave notice of examination and not of admission. There were also upwards of twenty candidates who did not leave their testimonials. It is therefore impossible to confound the five who were absent with the fourteen who were unsuccessful at the recent examination, or to identify the latter. ED.]

### EXAMINATION.—HONORABLE PRACTICE.

Sir,

I am one of the fortunate candidates who passed the last examination, and I know of no other method of noticing the great help I received in finishing my studies from one of the valuable books for the use of students, than that of your kind insertion of these few lines in your periodical.<sup>a</sup> On the ordeal of exami-

<sup>a</sup> We cannot name the author of the work referred to, as he is connected with this journal. ED.]

nation being appointed, I, with my humble abilities advocated the system through the medium of your Observer, and do now also most cordially approve it. The examination tends to stir up the faculties to exertion in obtaining a knowledge of that which ought to be, and is (if properly conducted) one of the most liberal of professions, especially when it is properly conducted, and not perverted to the practice of chicanery or mere gain's sake. The profession has long suffered because it has been used, by some *dishonorably*. Allow me therefore, to convey one word of advice to my legal brethren, that they strive to repair the breach which has been made by a few unworthy intruders into the fold, and by persevering in honorable practice, raise our calling to its wonted state of esteem and respectability.

J. E. jun.

#### EXAMINATION AND ADMISSION.

Sir,

I beg to thank you for replying to my former letter, and shall be greatly obliged by your kind attention to the following.—

I always thought that a young man could be both *examined and admitted in the same term*, (and the term "admitted" I mean to apply to *all the courts*), provided he gave notices of examination and of admission, which I believe it is customary to give both at the same time; but it would appear that I am under a mistake, on perusing the case of "Twynam," reported in your last Number, for there it states that, if he cannot be examined before Easter Term, he cannot be admitted before Trinity Term.

Now, on referring to the "Letter Box" of the first number of the Sixteenth Volume, *viz.* May 5th, 1838, I find the following:—"An Articled Clerk, whose articles are unexpired at the next day of examination, but expire in a day or two after, and during the same term, may be examined, and receive his certificate, so as to enable him to be admitted in that term."

As I am deeply interested on this point, I shall be extremely obliged by your solving the mystery in your next number. W. M.

[There must have been some mistake in the case referred to regarding the notices; for it is a frequent practice to be examined one term and admitted the next. Ed.]

#### SUPERIOR COURTS.

##### Lord Chancellor's Court.

###### MARRIED WOMAN.—SEPARATE ESTATE.—ALIMONY.

*By deed tripartite executed by husband and wife, and trustees for the wife, in contemplation of future separation, the husband covenanted to pay to the trustees, for the wife's use, 300l. a-year during her life, from and after such event. Separation afterwards took place, and the wife obtained in the Ecclesiastical Court a decree*

*for a divorce, and for alimony to the amount of 380l. a-year: Held, upon bill filed by a creditor to whom the wife had given a bill of exchange for a debt contracted by her, that the sum of 300l. a-year still existed as separate estate under the deed, liable to payment of her debts, and to the jurisdiction of this Court, from which, however, the additional 80l., being alimony, was exempted.*

*Quære, as to the legality of the deed.*

This was a motion to restrain an injunction. The bill was filed by the husband of a milliner against Lady Harriet Blaquier and General De Blaquier, her husband, and trustees named for the wife under a deed of separation, and it prayed a declaration of the Court, as hereinafter stated, and also an injunction to restrain the lady from drawing, and the husband and trustees from paying to her, an annuity of 300l., or any part thereof, secured to her by the said deed, until the plaintiff should be paid the amount of a bill of exchange for 225l., accepted by the lady for a debt contracted by her for necessaries. It appeared that General De Blaquier and his wife separated in the year 1814, in pursuance of a deed executed by them and a third party (the trustees) in 1812, in contemplation of such an event. By that deed General De Blaquier covenanted to pay to the Marchioness of Townsend, the mother of his wife and one of the trustees, a sum of 300l. a-year, being the interest of her fortune, for the separate use and maintenance of her and their two children. The annuity was regularly paid into the bank of Herries and Farquhar until 1820, when Lady De Blaquier obtained a decree for a divorce from her husband, on the ground of adultery, and a sum of 80l. a-year was added by the decree to the 300l. a-year, by way of alimony.<sup>a</sup> In the year 1829, Lady Harriet commenced dealings with the plaintiff's wife, and in 1835 she accepted a bill of exchange for the amount then due. This bill was made payable at the bank of Herries and Farquhar, where Lady Harriet continued to receive her income; but it was dishonoured, and the plaintiff then filed his bill in equity to obtain a declaration that the amount due was a charge on the 380l. a-year payable by General De Blaquier to his wife under the said decree, or on the 300l. a-year payable by him under the deed of separation. An injunction was subsequently granted as prayed, to restrain Lady Harriet from receiving or the General from paying any further sums to her trustee until the hearing of the cause. Lady Harriet afterwards put in an answer, in which she insisted that the 380l. was alimony, and as such not subject to the jurisdiction of this Court; that it was not separate estate, but a provision made for her support from day to day, and liable to be varied at the discretion of the Ecclesiastical Court. She denied all knowledge of the deed of separation. A motion was made on the strength of this answer to

<sup>a</sup> 3 Phillimore, 258.

dissolve the injunction, and the Vice Chancellor, being of opinion that the income of Lady Harriet was alimony, over which the Court had no control or jurisdiction, dissolved the injunction, and being also of opinion that the plaintiff had misrepresented his case in stating that the income was separate estate, his Honor directed him to pay costs.<sup>b</sup>

Mr. Stuart and Mr. J. Parker in support of the motion.—This was a creditor's bill, seeking to attach the debtor's alimony. Lady Harriet denied in her answer that she had ever promised to pay out of her alimony the debt, which she admitted to have contracted. The plaintiff having received information of the deed of separation, amended his bill, and prayed in the alternative to be declared entitled to payment out of the provision made for the lady by that deed, if not out of her alimony. If this provision is separate estate, there is no doubt that the plaintiff is entitled to payment out of it. *Murray v. Barlee*,<sup>c</sup> *Stuart v. Lord Kirkcwall*,<sup>d</sup> *Bulpin v. Clarke*.<sup>e</sup> That this deed, though for a prospective separation, was a valid deed, there were several authorities. *Lord Rodney v. Chambers*,<sup>f</sup> *Jee v. Thurlow*.<sup>g</sup> Alimony was nothing else than maintenance, and unless a wife could charge it with payment of debts, she might be reduced to the greatest distress for want of necessaries. The Vice Chancellor had in a former case, *Stones v. Cooke*,<sup>h</sup> held that the Court had jurisdiction over alimony.

Mr. Jacob, Mr. Wigram, and Mr. Lloyd, for Lady Harriet de Blaquiere, insisted that the deed of prospective separation was void. *Durant v. Setley*,<sup>i</sup> *Lord Westmeath v. Lord Salisbury*.<sup>k</sup> The deed was put an end to by the decree for the divorce, and alimony was thereby substituted for the former provision, and over alimony this court had not jurisdiction, nor could a wife charge it. The case of *Stones v. Cooke*, in which the Vice Chancellor held the contrary, was reversed by Lord Chancellor Lyndhurst.<sup>j</sup>

The Lord Chancellor.—The questions in this case are most important: admitted on all sides to be quite new. The first is, whether the 300*l.* is payable under the deed, and that question will depend upon the legality of such an assignment, and on the authorities cited. The other question is more important still, but before we come to that, it will be proper to see from the pleadings and affidavits whether Lady Harriet de Blaquiere repudiated her right under the agreement. If the question turned upon the agreement only, it would be easily disposed of.

The Lord Chancellor now gave judgment.—The bill prayed in the alternative that the income of 380*l.*, payable under the decree in the

Ecclesiastical Court, or the sum of 300*l.* a-year provided by the deed, being the interest of 600*l.*, the fortune of Lady de Blaquiere, be declared liable to the payment of her debts, and that she be restrained from receiving the same until after payment of the sum due to the plaintiff. It appeared that Lady de Blaquiere was married in 1811, and that in 1814 a separation took place, and an agreement was entered into by deed, under the sanction of her Ladyship's mother, the Marchioness of Townsend, by which she was to receive 300*l.* a-year, the interest of her fortune. In a few months afterwards a reconciliation took place, and the parties lived together for some time. They were finally separated in 1820, under a decree of the Ecclesiastical Court, and a sum of 80*l.* a-year was by that decree added as alimony to the 300*l.* a-year, of which the Ecclesiastical Court said nothing as to its being alimony or not. In 1838, before Lady de Blaquiere appeared to the bill, the Vice Chancellor granted an injunction which was afterwards dissolved by his Honor on the coming in of the lady's answer. His Honor's judgment proceeded on the ground that the whole 380*l.* a-year was alimony. If the whole income had been alimony, as the court never interfered with a provision made under a decree of the Ecclesiastical Court, except in relation to writs of *ne exeat regno*, the injunction could not have been granted, the court having no jurisdiction. He agreed with the judgment to that effect in *Stones v. Cooke*, by Lord Lyndhurst. But if the lady's income was not alimony, there was no reason why this Court should not exercise its jurisdiction in restraining her from receiving it. It appeared from the deed, that the husband and wife agreed to live separate, the wife to receive the interest of 600*l.*, and the wife's mother was a party to that agreement. The anticipated separation took place, and the deed took effect. The deed was never set aside. If the wife's title to the interest of the 600*l.* was good, this case did not differ from other cases in which the Court gave effect to such deeds for the benefit of creditors. But it was argued that this being an agreement in contemplation of a future separation, was not valid. There were conflicting decisions on that point, as *Rodney v. Chambers*, and *Jee v. Thurlow*, on one side, and on the other were the cases of *Durant v. Setley*, and *Westmeath v. Salisbury*. There were shades of distinction between the cases, and this case also had some distinguishing circumstances. But that question of the legality of the deed was too important to be disposed of on motion, and it could only be decided at the hearing of the cause. As to the 300*l.* a-year, the injunction must be granted, but the 80*l.* added for alimony remains untouched. That part also of the Vice Chancellor's order directing the plaintiff to pay costs must be reversed.

*Vandergucht v. De Blaquiere*, at Lincoln's Inn, August 7th and 8th, and at Westminster, November 16th, 1839.

<sup>b</sup> 8 Sim. 315.

<sup>c</sup> 4 Sim. 82; S. C. on appeal, 3 Myl. & K. 209; and 8 Leg. Obs. 473.

<sup>d</sup> 3 Madd. 387.

<sup>e</sup> 17 Ves. 365.

<sup>f</sup> 2 East, 283.

<sup>g</sup> 2 B. & C. 547.

<sup>h</sup> 7 Sim. 22.

<sup>i</sup> 7 Price, 477

<sup>j</sup> 1 Dow. N. S. 519; 5 Bligh, N. S. 339.

<sup>k</sup> 8 Sim. 321, n.

## Vice Chancellor's Court.

## HUSBAND AND WIFE.—DEED OF SEPARATION.

A husband by a deed, reciting that in consequence of differences between him and his wife they agreed to separate, covenanted for himself, his heirs, and executors, to pay to a trustee for her an annuity for her life; provided he might retain thereout any sum that he should be compelled at any time to pay in respect of her debts. The husband died leaving the wife surviving. The husband regularly paid the annuity, and was never called on to pay her debts. His executors refused to pay the annuity on the ground that the deed was void. Held, under the circumstances, that the wife was entitled to recover under the deed of separation against the executors who admitted assets.

Mr. Henry George Clough by deed dated in May 1817, and executed by him, his wife, and a Mr. Johnson as trustee for her, reciting that in consequence of unhappy differences which had arisen and still continued between himself and his wife, they had agreed to separate—covenanted for himself, his heirs, executors, and administrators, to pay unto Johnson, his executors or administrators 100*l.* a year during the life of the wife, by quarterly payments, in trust to apply the same towards her support. The deed contained a proviso to the effect that if Mr. Clough should from the date thereof be compelled by action or suit to pay any debts incurred by the wife, it should in such case be lawful for him to retain out of the next quarterly payments due by virtue of the deed, so much as he should have been compelled to pay in respect of such action or suit, with his costs and charges in respect of the same. The parties had lived separate in pursuance of the deed from the day of its date until 1838, when Mr. Clough died, having by his will left all his estate and effects to his executors, Mr. Lambert and Mr. Harrison, their executors and administrators, in trust for his son. The said executors proved the will, and possessed themselves of their testator's estate, which was more than sufficient to pay all his debts and liabilities, including the said annuity of 100*l.*, but that they refused to pay. There being four quarterly payments due to Mrs. Clough in or about the month of March last, she filed her bill against the said executors of her husband, stating, in substance and effect, as above stated, but more at large; and also that her husband had regularly paid the said annuity during his life (without the interference of Mr. Johnson, the trustee, who had been and still is living abroad) and that no action was ever brought against him nor was he ever put to any costs or charges in respect of any debts of the plaintiff. She by her bill prayed that the said Lambert and Harrison might be compelled to give in an account of the estate of her husband and pay her thereout the arrears of the said annuity, and set apart a sufficient sum and invest the same for securing all future payments thereof, &c.

The defendants by their answer insisted that the deed of separation was void. They admitted assets.

Mr. Knight Bruce and Mr. Moore were in support of the deed in behalf of the plaintiff. Their arguments are in effect comprised in the Vice Chancellor's judgment.

Mr. Girdlestone and Mr. Elmsey, for the defendants contended that the deed was void on two grounds—first, there was no covenant by the trustee to indemnify the husband against the wife's debts; and secondly, the deed did not disclose such circumstances as would support an application to the Ecclesiastical Court for a divorce *à mensa et thoro*. The parties could not do more by their deed than the Ecclesiastical Court would be able to do. No facts appeared on which that Court would act. An allegation of differences existing between the husband and wife was not sufficient. They must be such differences actually existing and proveable so as to support a demand for a separation by sentence of Court. No action at law could be brought on the covenant. The deed, being executed in contemplation of a future separation, was absolutely void. They referred to Roper's Law of Husband and Wife *passim*, and to *Jones v. Waite*.<sup>a</sup>

The Vice Chancellor said that the question which he was called on to decide in this case, was, in effect, whether as against the executors the wife could sustain an action at law for the arrears of the annuity. It appeared to him that no circumstances had been stated to induce him to think that the foundation of the deed was such that the Court could not enforce it. The Court could not presume it to be invalid, for it might happen for aught he knew that there were circumstances alluded to under the recital that "unhappy differences had subsisted and continued to subsist" sufficient to obtain from the Ecclesiastical Court a divorce *à mensa et thoro*. It was impossible for this Court to know what those unhappy differences were; it was enough for it to know that this was a deed not requiring any consideration to support it, and it lay on those who asserted that the policy of the law was against it to shew that the circumstances were such as not to warrant an application to the Ecclesiastical Court for a separation. He should be sorry to increase the number of classes of cases in which these deeds of separation had been upheld; but it was not for him on this sort of statement, without evidence of the real nature of the unhappy differences, to assume that the deed was bad in law. In his honour's opinion therefore, the wife might support her claim under this deed. Decree accordingly against the executors.

*Clough v. Lambert and others.* Sittings at Lincoln's Inn after Trinity Term, 1839.

<sup>a</sup> 5 Bingh. 341.

**In the Exchequer Chamber,**  
**On Error from the Queen's Bench.**

**PLEADING.—PRACTICE.**

Where a tenant in a writ of right demurred to the count of a defendant, and there was no joinder in demurrer, the Court held that the judgment must be that the defendant be in mercy, and that the tenant go without day, but that as both parties were not before the Court on an issue of fact or law, there could not be final judgment in the usual form, giving the land to the tenant and his heirs for ever.

This was a writ of error from the Court of Queen's Bench, and was argued some time since by Mr. Starkie for the plaintiff in error, and by Mr. Wightman for the defendant in error.

Lord Chief Justice *Tindal* now delivered judgment.—He said this was a case of a writ of right brought in the Court of Common Pleas at Lancaster. The tenant demurred specially to the count of the defendant. The defendant did not join in demurrer, but made default. So that the Court below gave judgment in favour of the tenant, that the defendant be in mercy, &c. and that the tenant go without day; and also that the tenant should recover the premises claimed under the writ, and should hold the same to him and his heirs for ever. A writ of error was brought in the Court of Queen's Bench against this judgment; and that Court affirmed the judgment that the defendant be in mercy, and that the tenant go without a day; but reversed the judgment as to the residue, so far as it declared that the tenant should hold the land to himself and his heirs for ever. This writ was then brought to review the judgment of the Court of Queen's Bench, but after argument and consideration we think that that judgment is right. This is not a demurrer, where both parties have joined in demurrer, and both are before the Court at the time of the judgment; but it is one where the defendant has made default, so that though the law may be that if a party makes default there shall be final judgment against him, according to the case in *Modern*, 5, where both parties had joined in demurrer, and the Court could give judgment on all matters in the case; yet here, one of the parties having made default, the judgment ought to be that which is given in the case of *nousuit*, or *non pros*. before the appearance of the party. In the case of personal actions, the judgment against the plaintiff under these circumstances, would be in bar of this particular action but not in bar of every other action in respect of the same right; and so far as analogy holds, we think that the judgments in real actions ought to proceed on the same principle. The authority in favour of this proposition is *Co. Litt.*,<sup>a</sup> which is strong to shew that the reason of the judgment being final, rests upon the ground that it is after the issue joined. *Haydon v. Smithick*<sup>b</sup> is to the

same effect. In *Fitzherbert's Abridgment*,<sup>c</sup> there is a case to shew that the final judgment may not be given after default, unless such default is after the issue joined. In *Brooke's Abridgment*,<sup>d</sup> indeed, the contrary is stated, and some authorities are cited. But as we find the law held to be the contrary by Lord Coke, with whom the authority in *Goldborough* concurs, and that this agrees too with reason and analogy, we think that this rule of law ought to prevail, and the judgment of the Court of Queen's Bench ought to be affirmed.

*Nisbett v. Rishton*, M. T. 1839. Excheq. Cham.

**Queen's Bench.**

[Before the Four Judges.]

**BANKING COMPANY.—STATUTE OF FRAUDS.**

Shares in a banking company are not "goods, wares, and merchandise," within the meaning of the Statute of Frauds, and may therefore be the subject of a parol contract.

*Assumpsit* for the refusal to transfer 100 shares in the Northern and Central Bank of England. The declaration alleged that the usual mode of sale was for the seller to sign notice of the transfer to the Bank, and that the certificates signed by him were to be produced to the Bank; that the defendant promised to sign, &c. and deliver the certificates, but that he refused so to do. Pleas: first, *non assumpsit*; second, that the plaintiff did not buy, nor the defendant sell *modo et forma*; third, that it was an entire contract for the sale of goods and merchandises of greater value than 10*l.*, and that there was no note in writing under the 17th section of the Statute of Frauds; a fourth, that it was a sale of an interest in lands, and that there was no memorandum thereof. The replication took issue on the first and second pleas, and traversed the third and fourth. The cause was tried before Mr. Justice *Coleridge* at Liverpool, in the Spring of 1838, when it appeared that the plaintiff was a broker at Liverpool, and the defendant a cloth factor in Yorkshire; that on the 8th of July preceding there had been a conversation between the parties relating to the purchase and sale of 100 shares in the Northern and Central Bank, at the rate of 2*l.* 10*s.* a share: the effect of the conversation was proved to be, that, if on going home, the defendant approved of the price offered, he would send the necessary certificates, and he took blank forms away with him for the purpose. He did not send. From that day the price began to rise, and on the 14th of August it had risen to 4*l.* per share. On the 4th of August the plaintiff tendered the defendant the sum of 250*l.*, and demanded the transfer

<sup>c</sup> 245; 26 Hen. 8, fol. 8, B. pl. 16.

<sup>d</sup> Pl. 57—66.

<sup>a</sup> By which it is enacted, that "no contract for the sale of any goods, wares, or merchandise, for the price of 10*l.* or upwards, shall be good," without part acceptance or payment, or a note in writing.

of the shares. His demand was refused. He waited for a few days, and then bought 100 shares at the then advanced price, and now brought his action for the difference. It was contended, first, that he had no right to recover at all; and next, that, at all events, he could not recover the full price he had paid, in consequence of choosing to wait so long after the refusal before he made the purchase. The jury returned a verdict for the plaintiff,—Damages 100*l.*; but leave was reserved to move to set aside this verdict, and enter a verdict on the third and fourth pleas for the defendant.

Mr. Creswell and Mr. Crompton shewed cause against the rule.—It is clear that these shares do not come within the description "goods, wares, and merchandise," used in the Statute of Frauds. It is true, that in *Hornblower v. Proud*<sup>b</sup> it was held that the bills of exchange in the hands of a banker at the time of his bankruptcy, and coming into the possession of his assignees, were held to be goods and chattels in the order and disposition of the bankrupt at the time of his bankruptcy under the provisions of the Statute of James. But, in the first place, bills of exchange are more completely property, and transferable property, than are shares in a banking company, for the bills need only be transferred by the holder to another person, and the latter can then sue on them, while the transfer of shares is clogged by many different formalities. In fact, bills are like goods, for the property in them passes by mere delivery; but that is not the case with shares in a banking company: so that the rule which applies to bills as resembling goods, will not apply to them. There is, besides, a great distinction between the objects and the provisions of the Statute of Frauds and those of the Statutes of Bankruptcy. The one is not a guide for the other. The Court of Exchequer has already decided this question. In *Bligh v. Brent*,<sup>c</sup> it was there held that the shares in the Chelsea Water-works Company are personal property, and will therefore pass by a will not executed according to the provisions of the Statute of Frauds. That case must govern the present.

Mr. Alexander in support of the rule. These shares are goods and chattels. Like goods they are the subject of daily bargain and sale, and their price is quoted like the price of any other commodity. It is not because there are certain formalities to be observed in the transfer of them, that they are not to be treated as goods and chattels, for if that was the rule, then wines and spirits would not come within the description, nor would foreign silks, nor any other things that might be mentioned. In *Ex parte Vallance*,<sup>d</sup> it was held that shares of this kind would pass by the act of bankruptcy, with the bankrupt's other goods, to the assignee. The case carried the law further than that of *Hornblower v. Proud*, and settles the principle on which the present must be decided. There is no case directly in point with

the present, but it is submitted that the cases on the bankrupt acts, in which it has been held that shares will pass to the assignees, must be held conclusive on the score of analogy.

There was no argument on the fourth plea.

Lord Denman, C. J.—The question in this case is, whether the contract is void under the 17th section of the statute of frauds; that is, whether a contract for shares in a banking company, is to be considered a contract for the sale of goods, wares, and merchandises, within the meaning of that statute. There is, as it has been properly acknowledged, no case exactly in point. There are cases which appear to be in point if they are looked at with a view to the mere words of the statute; cases which depend on the reputed ownership of goods under the acts relating to bankrupts; but looking at the purport of these sections of the bankrupt law, I think it is not reasonable to press more strongly than Mr. Alexander has done, the authority of these decisions. I think that these shares are merely choses in action, and are not capable of delivery, and therefore that the statute of frauds does not vitiate a parol contract made for the sale of them. On that point therefore the rule must be discharged.

Mr. Justice Patteson.—I am of the same opinion. The distinction has been well put between the bankrupt act and the statute of frauds; for the words of the two are very different. In the statute of frauds, the words are "goods, wares, and merchandise;" in the 72d section of the bankruptcy act, which provides for the case of reputed ownership, the words are "goods and chattels."

The other judges concurred.

Rule discharged.—*Humble v. Mitchell*. M. T. 1839. Q. B. F. J.

On another point the Court recommended the plaintiff to consent to a reduction of damages.

#### Common Pleas.

JUDGE'S SUMMONS. — DISMISSAL. — INTERFERENCE OF THE COURT.

*The Court will not entertain a rule to dismiss a summons, which is pending at chambers.*

Wilde, Serjt. shewed cause against a rule obtained by Petersdorff, calling upon the plaintiff to shew cause why the particulars of set off already delivered should not be deemed sufficient, or why the defendant or the bankrupt should not be at liberty to inspect the books of the bankrupt, and why the summons now pending between the parties for further and better particulars should not be dismissed. It was an action by the assignees of a bankrupt against the defendant, who was an architect, and the defendant pleaded by way of set off, a claim for commission or allowance on certain work done. An application for better particulars was made at chambers on the 27th April, and on the 2d May an order was made that further and better particulars should be delivered. New particulars were in consequence given, but the plaintiff obtained a second summons with the same object as that

<sup>b</sup> 2 Barn. & Ald. 377.

<sup>c</sup> 2 Younge & Col. 268.

<sup>d</sup> 2 Dea. 354.

which had been first granted; but on its coming on to be heard, the defendant's attorney stated that he had delivered the best particulars in his power, and that he could deliver no others, unless he should be permitted to inspect the bankrupt's books. That an account had been stated between the bankrupt and the defendant in the year 1834, when they had settled their mutual claims, and that the particulars delivered were, as nearly as could be collected, a copy of that account, but that the dates and *minutiae* of the account could not be supplied. An application was then made to the learned judge (*Vaughan*, J.,) to allow the summons to be postponed, in order that an affidavit might be procured from the bankrupt; and it was now sworn that the postponement having been granted, on application being made to the bankrupt he refused to swear, because the attorney for the assignees had declared that they would not interest themselves in procuring his certificate if he made any affidavit. The present application was thereupon made in Trinity Term.

It was contended that the course which had been adopted by the defendant in coming to the court was quite unjustified, and that it was his duty to wait until the summons was decided upon by the learned judge. The judge might come to a right conclusion, and it was not for the defendant to presume that he would come to any decision opposed to his interests. The defendant's attorney, in an affidavit which he now made, denied the use of the expressions attributed to him by the bankrupt, but it was urged that the merits of the set off ought to be discussed now.

*Kelly* and *Petersdorff*, in support of the rule, submitted that as the defendant had failed in procuring the affidavit which he had desired to produce, it would have been useless for him to go back to chambers, and that he was therefore quite right to come to the Court.

*Maule*, J.—The learned judge has not yet called upon you to give the better particulars, without the inspection of the books. Then why should you come here? he may decide in your favor.

*Tindal*, C. J.—The same question is going on in two places at once; before the learned judge at chambers, and in this Court.

*Kelly*.—The whole question was now before the Court and might be decided.

*Maule*, J.—Can you say that this proceeding has any other effect than that of withdrawing a pending summons from a learned judge at chambers? You might urge your answer, and your excuse before the judge, and it is quite without a precedent to take such a step as this. If the judge does not think your excuse reasonable, you may come to the court to review his decision.

*Kelly*.—An opinion was expressed by the learned judge, which led the defendant to understand what would be the result of this case.

*Tindal*, C. J.—When you go back before the learned judge, he may come to the decision which you wish us to arrive at; but now you

bring the case before a higher authority at a double expense, while the same matter may be brought out before a judge, and may be listened to by him.

Rule discharged.—*Abbott and others, assignees v. Hupper*, M. T. 1839. C. P.

#### INTERPLEADER RULE.—COSTS.

In an action to recover 183*l.*, a second claim having been set up, the defendant applied to the Court under the Interpleader Act, and an order was made for the trial of a feigned issue between the two claimants. A verdict having been found for the plaintiff in the original action for 50*l.*, the learned Judge ordered each party to pay his own costs: Held, that it was a reasonable exercise of the discretion vested in him by the statute, upon an application to set aside the order which he made.

*Cowan* moved for a rule calling on the defendant to shew cause why an order made by *Collman*, J., at chambers should not be discharged, and why the plaintiff should not have his costs of the original action between the parties, and of a feigned issue ordered to be tried under the provisions of the Interpleader Act. The affidavits on which he moved stated that in the year 1835, Messrs. Sunderland, Donnell & Co., army clothiers, entered into a contract to supply certain clothing to the Military Academy at Woolwich, and that they made a sub-contract with Hall Carr, the bankrupt, who was the father of the plaintiff. The bankrupt continued to perform his contract up to the year 1838. In the month of June in that year, a warrant was issued for the delivery of 129 suits of clothes on the 31st August, and the bankrupt proceeded to accomplish the order; but the clothes were not duly delivered, and on the 3rd September the bankrupt absconded to America. The plaintiff carried on a separate business at Woolwich as a tailor, and in consequence of the default made by his father, he undertook at the desire of the superintendent of the college, to supply the clothes, and in order to complete the order within the time allowed him, he took those suits which his father had already made, or had commenced; and having made up the requisite number, on the 17th Septem. he delivered the whole quantity. He then applied to Messrs. Sunderland, Donnell & Co. for payment for the clothes; but a cross demand being made by the assignees of Hall Carr, the bankrupt, he refused to pay either party. The plaintiff then brought an action, and indorsed his writ of summons for 183*l.*, the amount which he claimed for that portion of the contract which he had performed; but a claim was then also made by the assignees for the whole amount of 492*l. 17s. 6d.* due upon the contract. In March 1839, Messrs. Sunderland & Co. applied to the Court under the Interpleader Act, and a feigned issue was ordered to be tried between the plaintiff and the assignees of Hall Carr, in order to ascertain how much of the sum of 492*l. 17s. 6d.* which was paid into Court, either

party was entitled to receive. The issue was tried, and a verdict returned for the plaintiff for 50*l.*, and on the 30th October an application was made to *Coltman* J., at chambers, to make an order as to costs, and he directed that each party should pay his own costs. It was now contended that the same rule which was observed in ordinary actions as to the disposition of costs, should be followed in a case of the present nature. The plaintiff was substantially the successful party, and he was therefore entitled to costs.

*Bosanquet*, J.—The costs do not follow as a matter of course. If the learned Judge had directed the costs to abide the event, there would have been a difference; but here the costs are in the discretion of the judge.

*Cowan* urged that the plaintiff was in no wise desirous of being a party to the feigned issue. He brought his action in the ordinary manner, and it would be unjust that he should be compelled to pay costs, when he had succeeded. It was in the power of the assignees to have protected themselves effectually by paying money into Court. The costs did not depend on the amount of the damages recovered, but upon the result of the issue.

*Tindal*, C. J.—I think we ought not to disturb this order made by Mr. Justice *Coltman*, unless we can see that in the exercise of the discretion clearly given to him by the statute, he has arrived at a wrong conclusion. But I confess that I do not see that under the circumstances of this case he has done so. Here was a sum of money lying *in medio* between the parties; each of them claimed it, and each was wrong. Supposing this case to have been referred to an arbitrator with authority to give costs according to his discretion, could we say that it was in the exercise of an unsound discretion, that after giving a part of the sum to the plaintiff, far short of that claimed, he had made each of the parties bear his own costs? I think that the order was made in the exercise of a sound discretion.

*Bosanquet*, J. concurred.

*Maule*, J.—The object of an interpleader rule and of a feigned issue is to enable the judge to distribute the finding, and it is quite immaterial, which was the plaintiff, and which was the defendant. Here it is found that the plaintiff is entitled to a sum, one third part only of that claimed, and that the defendant is entitled to a great deal more; and it seems to me that this order is both reasonable and just.

Rule refused.—*William Carr v. Edwards and others, assignees of Hall Carr, a bankrupt.* M. T. 1839. C. P.

### Exchequer of Pleas.

#### JUDGMENT AS IN CASE OF A NONSUIT.—COSTS OF THE DAY.—SECOND DEFAULT.

Where a plaintiff has made default in proceeding to trial pursuant to notice, and that default is cured by the defendant obtaining the costs of the day, that does not

preclude the latter from taking advantage of a subsequent default in not giving notice of trial.

In this case issue had been joined on the first day of Michaelmas Term, 1838; also notice of trial had been given for the second sittings in the same term. The cause afterwards was made a remanet for the sittings after term; then, however, the plaintiff did not proceed to trial. A rule *nisi* was obtained for costs of the day for not proceeding to trial on the last day of Hilary Term. It was drawn up for the second day of Easter Term, and upon no cause being shown, was made absolute. On the first of May taxation took place, and the costs were paid; a rule *nisi* for judgment as in the case of a nonsuit, was obtained on the 7th of May, to shew cause on the first day of Trinity Term; on the 4th of June cause was shewn, when, on the ground (according to the defendant's statement) of a defect in the affidavit upon which the rule had been obtained; but, (according to the plaintiff's statement) of the defendant having obtained the costs of the day, the rule was discharged with costs. On the 6th of June the costs of that rule were paid, and on the 10th, the present rule for judgment as in case of a nonsuit was obtained. By consent the rule was enlarged until the present term. Since Michaelmas Term 1838, no fresh notice of trial had been given.

*Cole* submitted in the first place, that costs of the day having been paid, judgment as in case of a nonsuit could not be obtained; and no fresh notice of trial being given, there could be no secqd default.

*R. V. Richards*, in support, contended that a second default had been committed, because no notice of trial had been given for the sittings in Easter Term.

*Per Curiam*.—The rule of Reg. Gen. H. T. 2 W. 4, cures the first default, from a motion being made for costs of the day; but the defendant is not precluded from taking advantage of a subsequent default.

Rule discharged on a peremptory undertaking.—*Smith v. Pale*, M. T. 1839. Ex. eq.

### THE EDITOR'S LETTER BOX.

We omitted to mention that the "Uncommon Law Rhymes," which appeared in our last number, were sent by a correspondent, who states that while dancing a very weary attendance at the Judges' Chambers, his foot chanced to disturb a rather questionable looking packet; that curiosity prompted him to look into it, as it bore no superscription and was unsealed, when the lines in question met his eye. He was unable to discover the author, and sent us a copy of the MS.

The complaint of R. C. has been communicated to the Publisher, and we have no doubt will be promptly attended to.

The letters of S. P.; H. O. B.; and H. B., have been received. The subjects to which they relate have perhaps been sufficiently discussed, but the letters shall be considered.

# The Legal Observer.

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SATURDAY, DECEMBER 14, 1839.

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— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE APPROACHING SESSION OF PARLIAMENT.

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PARLIAMENT is now formally appointed to meet on the 16th of January, and public expectation is, as usual, on the tiptoe. This meeting is undoubtedly rendered the more interesting by the nicely balanced state of parties, and the many really important matters which must almost immediately come under their consideration. Some of these are highly interesting to us as lawyers. With the mere contests of party we have nothing whatever to do. The two great parties in the state each rank many most distinguished members of the profession on their side; the whole firmament of stars cannot shine on us at one time. We are content with one hemisphere, and are not disposed to quarrel with any one because they prefer the other. As to all mere party matters, therefore, we have nothing to say; nor are we to be tempted, even by the strictly professional contest pending at Newark, to write one syllable. Neither do we concern ourselves with the victories in Afghanistan, nor even with *sea*, although we admit that this comes home to “the business and bosoms” of our readers more than the rest. The question of Privilege, however,—the reforms in Chancery and Bankruptcy,—the County Courts Bill,—the Enfranchisement of Copyholds,—the Consolidation of our Statute and Common Law,—these are indeed most interesting to us,—most pertinent to us: a word therefore as to each.

The question of Privilege will probably be the first of these which may call for the attention of the House; and, as in the case of Polack, the privileges of the House of Lords was incidentally trenched on, for in that case the matter alleged to be libellous

was contained in evidence taken before a Committee of the House of Lords, printed by the House of Commons,—we think it not unlikely that this circumstance may lead to the introduction of a declaratory bill, which may pass both Houses almost unanimously.

With respect to reform in Chancery, we conceive that the Lord Chancellor is pledged to bring in his measure early in the ensuing Session, and that Lord Brougham and Lord Lyndhurst are bound to give their assistance in devising a remedy for the admitted evils under which the Court of Chancery now labours.\* We collect from the late debate that the Chancellor favours the appointment of two more Judges in the Court of Chancery, and the abolition of the Equity Exchequer;—the assimilating the practice of all the Courts of Chancery;—the reform of all the subordinate offices;—and, above all, the establishment of a permanent Lord Chancellor.

The Bankruptcy Commission, to which we adverted last week, has had several sittings, and we understand it is not improbable they may close their labours and make their Report early in the next Session, and in sufficient time to allow its being acted on forthwith. We shall be surprised if they do not recommend the abolition of the Court of Review,—the consolidation of the Bankruptcy and Insolvent Debtors’ Courts, and the extension of the powers of the Bankruptcy Commissioners throughout the provinces.

The County Courts Bill will probably be renewed, as founded and remodelled by the Select Committee of last Session. By these the patronage is vested in the Lord Chancellor.

\* See the debate in the House of Lords, June 1839, 18 L. O. 161—169.

The Bill for Enfranchisement of Copy-holds, which reached the House of Lords, will, we trust, be renewed there in such time that it may pass; and we have good reason to hope this, as all parties concurred in the principle of this Bill, although Lord Lyndhurst disapproved of some of its details.<sup>b</sup>

The Consolidation of our Statute Law and of our Common Law have not as yet been formally brought before Parliament, but we conceive the time has arrived when this question may be advantageously discussed.<sup>c</sup>

All these matters will no doubt engage much of our attention in the ensuing legal session, and we shall have occasion to discuss each of them separately.

## PRACTICAL POINTS OF GENERAL INTEREST.

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### RATING A WORKHOUSE.

The following case decides a point of some practical importance—that the guardians of a union are rateable for a workhouse erected under 4 & 5 W. 4, c. 76, in one of the parishes of the union, to the poor-rate of the parish in which the house is situate.

Lord Denman, C. J., delivered the judgment of the Court.—The question is, whether a workhouse situate in one of many parishes which have been formed into a union is rateable, in the hands of the guardians, towards the relief of the poor of the parish in which it is. To shew that it is not so rateable the class of cases was referred to in which the Court has held property exempt from rating by reason of its being wholly unproductive to the occupiers, commencing with *The Salter's Load Sluice case*, 4 T. R. 730, and ending with the late decision in favour of the corporation of Liverpool. The great leading principle of these cases I take to be this—that when that person who must be deemed the actual occupier is merely a trustee for others, and is prevented by the law from deriving any benefit whatever from the occupation, that person cannot be considered as the occupier for the purpose of being rated: the act of Elizabeth plainly supposing both control over the property and the power of enjoying it. Thus, in *The Salter's Load Sluice*

case, where tolls were to be applied for the several purposes of the act, and for no other whatever, Lord Kenyon said, “here is property which is the subject of the rate, but no occupier of it.” The *Liverpool case*, 7 B. & C. 61; S. C. 9 D. & R. 780, may be considered as the same with that just cited, which it expressly follows, and *The Weaver Navigation case*, 7 B. & C. 70, n.; S. C. 9 D. & R. 788, in the same volume, agrees with them entirely. *Rex v. Sculcoates*, 12 East, 40, fully acknowledges the principle, on which also we lately decided *Reg. v. Beverley Gas-works*, 1 N. & P. 646; and the very important case of *Reg. v. The Corporation of Liverpool*, 1 P. & D. 334. Under the circumstances which appear on all these occasions, there is no impropriety in saying that the public was the occupier, made such by act of parliament, and receiving by the same authority all the profits of the property, while those who would otherwise have been the occupiers are in the situation of public servants, receivers, and managers for the public benefit, without any interest of their own. So it was argued here—the workhouse is hired by the guardians under authority of the late statute for the public purpose of maintaining the poor, and with no private advantage to the occupiers. But though the maintenance of the poor be a public purpose, the maintenance of the poor of this particular district is a burden on that district alone. The occupation is not beneficial to the guardians individually, but the most advantageous mode of relieving their poor is an advantage to that body. We decided accordingly in *The Governors of the Poor of Bristol v. Waite*, 5 A. & E. 1; S. C. 6 N. & M. 383, which can only be distinguished from the case before us by the local situation of this property, which is within one of the parishes composing the union. But one parish is not more a separate body from another than the parish of St. Mary the More in Wallingford is from the union which annexes it to twenty-eight other parishes. It is not necessary to make any observation on the intermediate cases of property voluntarily appropriated to religious and charitable purposes. We decide on the ground that this property, not being devoted to a public purpose, and being beneficially occupied, is subject to the poor-rate. Order of sessions confirmed.—*Reg. v. The Guardians of the Wallingford Union*, 2 P. & D. 226.

<sup>b</sup> See the debate, *ante*, pp. 81—85.

<sup>c</sup> See Mr. Tyrrell's propositions, and the Report of the Select Committee, 18 L. O. 401, 417, and 465.

## THE NEW CIVIL LIST.

SOME alteration of the Civil List will be required on the approaching marriage of her Majesty. It will be necessary, as in the cases of persons of less exalted station, to say something about *marriage settlements*, and that, as we conceive, immediately on the meeting of Parliament. Very soon after the accession of Queen Anne, the Civil List was settled without dissolving the Parliament, and on the 17th March, 1701, the House came to a resolution *nemine contradicente*, that the same revenues which were payable to King William the Third during his life, be granted and continued to Queen Anne. See Journals of the House of Commons, 1701, p. 802. And a bill founded on this resolution passed both Houses; but as far as we can discover, no increase was made to the allowance of Prince George.

Under these circumstances, we shall extract for our readers' information, the following short history of the Civil List, from Mr. Stewart's "Rights of Persons according to the Text of Blackstone."

" Before any part of the consolidated fund (the surplusses whereof are one of the chief ingredients that form the sinking fund) can be applied to diminish the principal of the public debt, it stands mortgaged by parliament to raise an annual sum for the maintenance of the king's household and the civil list. For this purpose, in the reigns preceding that of George 3d, the produce of certain branches of the Excise and Customs, the Post Office, the duty of wine licenses, the revenues of the remaining crown lands, the profits arising from courts of justice, (which articles include all the hereditary revenues of the Crown), and also a clear annuity of 120,000*l.* in money, were settled on the King for life, for the support of his Majesty's household, and the honour and dignity of the Crown. And as the amounts of these several branches was uncertain, (though in the reign of Geo. 2, they were computed to have sometimes raised almost a million), if they did not arise annually to 800,000*l.* the parliament engaged to make up the deficiency. But his Majesty George the 3d, having, soon after his accession, spontaneously signified his consent that his own hereditary revenues might be so disposed of as might best conduce to the utility and satisfaction of the public; and having graciously accepted the limited sum of 800,000*l.* per annum for the support of his civil list; the said hereditary and other revenues were carried into and made a part of the aggregate fund, and the aggregate fund was charged<sup>a</sup> with the payment of the

whole annuity to the Crown of 800,000*l.* which being found insufficient, was increased in 1777 to 900,000*l.* per annum. Hereby the revenues themselves, being put under the same care and management as the other branches of the public patrimony, produce more and are better collected than heretofore; and the public was still a gainer of near 100,000*l.* per annum by this disinterested conduct of his Majesty.

" On the accession of George the 4th, he also placed his interest in the hereditary revenues of the Crown at the disposal of the House of Commons, and they were carried to the consolidated fund for his life, 1 G. 4, c. 1; and by the same statute a revenue of 850,000*l.* in England, and 207,000*l.* in Ireland, was granted to his Majesty for life. On the accession of William the 4th, the hereditary revenues of the Crown were also surrendered in the same manner, and the clear yearly sum of 510,000*l.* was directed to be paid out of the consolidated fund, for the support of his Majesty's household, and of the honour and dignity of the Crown, 1 W. 4, c. 25. And by the same statute, the civil list was relieved from those expenses which had no immediate connection with the royal dignity, or the personal comfort of the sovereign, but which belonged rather to the civil government of the state. It was also provided that if the civil list ever exceeded the sum of 539,000*l.*, the particulars and cause of such excess was to be laid before parliament. On the accession of her present Majesty, a similar course was pursued in all particulars. By the 1 Vict. c. 2, the hereditary revenues of the Crown were carried to the consolidated fund during the life of her Majesty (s. 2,) and the yearly sum of 385,000*l.* is to be paid out of the consolidated fund for the support of her Majesty's household, and the honour and dignity of the Crown; and by s. 10, it is enacted, that whenever the total charge on the civil list shall in any year exceed the sum of 400,000*l.*, an account of the particulars shall be laid before parliament.

" The expences defrayed by the civil list were those that in any shape related to civil government: as, the expences of the royal household; the revenues allotted to the judges, previous to the year 1758; all salaries to officers of state, and every of the king's servants; the appointment to foreign ambassadors; the maintenance of the queen and royal family; the king's private expences, or privy purse; and other very numerous outgoings, as secret service money, pensions, and other bounties; which sometimes have so far exceeded the revenues appointed for that purpose, that application has been made to parliament to discharge the debts contracted on the civil list; as particularly in 1724, when one million was granted for that purpose by the statute 11 G. 1, c. 17, and in 1769 and 1777, when half a million and 600,000*l.* were appropriated to the like uses, by the statutes 9 G. 3, c. 34, and 17 G. 3, c. 47.

" But at the commencement of the last reign an alteration as to this was made, and the revenues of the judges, the appointments to the

<sup>a</sup> Stat. 1 Geo. 3, c. 1.

foreign ambassadors, and the maintenance of the royal family,<sup>b</sup> were charged on the consolidated fund, to which is now added the secret service money; and the only charges on the allowance to her present Majesty are the following:—

First class—For her Majesty's privy purse . . . . .	£. 60,000
Second class—Salaries of her Majesty's household, and retired allowances . . . . .	131,260
Third class—Expences of her Majesty's household . . . . .	172,500
Fourth class—Royal bounty, alms, and special services . . . . .	13,200
Fifth class—Pensions to the extent of £1,200 per annum <sup>c</sup> . . . . .	
Sixth class—Unappropriated monies	8,040
	£385,000

"The civil list is indeed properly the whole of the King's revenue in his own distinct capacity; the rest being rather the revenue of the public, or its creditors, though collected and distributed again, in the name and by the officers of the crown; it now standing in the same place as the hereditary income did formerly; and as that has gradually diminished, the parliamentary appointments have increased. The whole revenue of Queen Elizabeth did not amount to more than 600,000*l.* a-year,<sup>d</sup> that of King Charles I, was 800,000*l.*,<sup>e</sup> and the revenue voted for King Chas. 2, was 1,200,000*l.*,<sup>f</sup> though complaints were made (in the first years at least) that it did not amount to so much.<sup>g</sup> But it must be observed, that under these sums were included all manner of public expenses; among which Lord Clarendon in his speech to the parliament computed that the charge of the navy and land forces amounted annually to 800,000*l.*, which was ten times more than before the former troubles.<sup>h</sup> The same revenue, subject to the same charges, was settled on King James 2:<sup>i</sup> but by the increase of trade, and more frugal management, it amounted on an average to a million and a half per annum, (besides other additional customs granted by parliament,) which produced an annual revenue of 400,000*l.*) out of which

<sup>b</sup> The allowances to the various branches of the royal family were formerly charged on the civil list, but they are now charged on the consolidated fund, 1 W. 4, c. 25, and 1 & 2 W. 4, c. 20. These allowances in the year 1838, amounted to the sum of 278,857*l.* By an act of the present Queen, 1 & 2 Vict. c. 8, her Majesty is enabled to grant an annual sum of 30,000*l.* to her Royal Highness the Duchess of Kent, charged on this fund.

<sup>c</sup> This item has been much reduced under the 1 & 2 Vict. c. 2.

<sup>d</sup> Lord Clar. continuation, 163.

<sup>e</sup> Com. Jour. 4 Sept. 1660.

<sup>f</sup> Ibid.

<sup>g</sup> Ibid. 4 June 1663; Lord Clar. Ibid.

<sup>h</sup> Lord Clar. 165.

<sup>i</sup> Stat. 1 Jac. 2, c. 1.

<sup>j</sup> Stat. 1 Jac. 2, c. 3.

his fleet and army were maintained at the yearly expense of 1,000,000*l.*<sup>k</sup> After the revolution, when the parliament took into its own hands the annual support of the forces, both maritime and military, a civil list revenue was settled on the new King and Queen, amounting with the hereditary duties, to 700,000*l.* per annum,<sup>l</sup> and the same was continued to Queen Anne and King George 1.<sup>m</sup> That of King George 2, we have seen, was nominally augmented to 800,000*l.*,<sup>n</sup> and in fact was considerably more; and that of George 3, was avowedly increased to the limited sum of 900,000*l.* That of George 4, was further increased to the sum of 1,057,000*l.* That of William 4, was settled at 510,000*l.*, and that of her present Majesty at 385,000*l.*; but with respect to our last and our present Sovereign, the charges, as we have already seen, are much lighter." pp. 349—353.

## CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

### No. XVII.

#### CITY OF LONDON POLICE.

2 & 3 Vict., c. 94 (local).

The larger part of this act contains provisions similar to the Metropolis Police Act, which we printed verbatim in our last volume, (see pp. 307, 323, 355.) Of the present act, therefore, we state only the substance, except of a few clauses.

*An Act for regulating the Police in the City of London.* [17th August 1839.]

10 G. 2, c. 22. *Recited act repealed.*—Whereas an act was passed in the tenth year of the reign of King George the Second, intituled "An Act for the better regulating the Nightly Watch and Beadles within the City of London and Liberties thereof; and for making more effectual the laws now in being for paving and cleansing the streets and sewers in and about the said city," whereby certain rates are imposed for the purposes of the said act: And whereas a more efficient system of police has been established within the said city and the liberties thereof by day and night instead of such nightly watch, and in order to render the same still more effective, it is expedient that the said act should be repealed, and that other provisions should be made in lieu thereof: and whereas the mayor, aldermen, and commons of the City of London in common council assembled, are willing and desirous to contribute out of the revenues and possessions of the mayor and commonalty and citizens of the said city a portion of the expence of the said police force: may it therefore please your Majesty,

<sup>k</sup> Com. Jour. 1 Mar. 20 Mar. 1688.

<sup>l</sup> Ibid. 14 Mar. 1701.

<sup>m</sup> Com. Jour. 17 Mar. 1701; 11 Aug. 1714.

<sup>n</sup> Stat. 1 Geo. 2, c. 1.

that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that from and after the twenty-fifth day of December next after the passing of this act, the said act of the tenth year of the reign of King George the Second, or such part thereof as is now in force, shall be and the same is hereby repealed.

**2. Rules for the interpretation of this act.**

**3. Commissioner of police force to be appointed by the common council.**—And be it further enacted, that the said mayor, aldermen, and commons, in common council assembled, shall and they are hereby authorized and required to appoint a fit person, subject to the approval of her Majesty, to be signified by one of her Majesty's principal Secretaries of State, as Commissioner of the Police Force of the City of London and the liberties thereof, with such annual salary, not less than eight hundred pounds, as they shall from time to time think proper; and her Majesty, or the court of mayor and aldermen, may remove the said commissioner, if she or they shall see occasion so to do, for misconduct or other reasonable cause; and the said mayor, aldermen, and commons, in common council assembled, may, upon any vacancy in the said office by death, removal, or otherwise, appoint another fit person, subject to the approval of her Majesty as aforesaid, as commissioner of the said police force, in lieu of the person making such vacancy: Provided always, that no person who shall have been dismissed from the office of commissioner of the City Police, or whose appointment as such commissioner shall have been once disapproved by her Majesty, shall be again put in nomination for the said office.

**4. Proposal of candidates by aldermen, &c.**  
**List of candidates to be circulated.**—And be it further enacted, that on every occasion of appointment to the office of Commissioner of the City Police, it shall be lawful for every alderman or common councilman who shall be desirous of proposing any person for the said office to lodge with the town clerk the name and place of abode of the candidate whom he will propose, with such testimonials as to his qualifications for the office as the proposer shall think fit; and all such statements shall be printed and circulated among the members of the common council, and a printed copy thereof shall be sent to the Secretary of State fourteen days at least before the day on which the said mayor, aldermen, and commons in common council assembled, shall finally determine on the person whom they will elect for the said office.

**5. Commissioner to be sworn. Oath.**

**6. Commissioner may be appointed a justice on the petition of the court of aldermen and court of common council.**—And be it further enacted, that in case the said commissioner shall not be a justice of the said city, it shall be lawful for her Majesty, if she shall be so pleased, on the petition of the court of mayor

and aldermen, and the said mayor, aldermen, and commons, in common council assembled, to appoint the said commissioner to be a justice of the peace in and for the said liberties; but no such appointment shall authorize the said commissioner to act as a justice of the peace at any court of general or quarter sessions, or in any manner out of sessions, except for the preservation of the peace, the prevention of crimes, the detection and committal of offenders, and in carrying into execution the purposes of this act; and in case the commissioner shall be appointed a justice of the peace as aforesaid he shall take all the oaths usually taken by a justice of the peace: Provided always, that whenever any such commissioner shall resign or be removed from his office of commissioner of police he shall cease to be a justice of the said city and liberties as aforesaid.

**7. Commissioner not to sit in parliament or be engaged in business, or serve on juries.**—And be it further enacted, that the said commissioner, during his continuance as commissioner, shall be incapable of being elected or sitting as a member of the House of Commons, and shall not be engaged in the carrying on or practice of any other business or profession, and shall be exempt from being returned, and from serving on any juries or inquests whatsoever, and shall not be inserted in any lists of men qualified and liable to serve on juries.

**8. Commissioner and members of the police force not to vote in the election of members of parliament for the city of London or adjoining counties, or within the Metropolitan Police District.**—And be it further enacted, that no commissioner or person belonging to the police force appointed by virtue of this act shall, during the time that he shall continue in any such office or within six calendar months after he shall have quitted the same, be capable of giving his vote for the election of a member to serve in parliament for the city of London, or for the county of Middlesex, Surrey, Hertford, Essex or Kent, or for any city or borough within the Metropolitan Police District, nor shall, by word, message, writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to be a member to serve in parliament for the said city of London, or for any such county, city, or borough; and if any such commissioner or person belonging to the police force shall offend therein he shall forfeit the sum of one hundred pounds, to be recovered by any person who will sue for the same by action of debt, to be commenced within six calendar months after the commission of the offence; and one moiety of the sum so recovered shall be paid to the informer, and the other moiety thereof to the chamberlain of the said city, to be by him added to and applied as part of the fund for the purposes of this act: Provided always, that nothing in this enactment contained shall subject any such commissioner or person belonging to the police force to any penalty for

any act done by him at or concerning any of the said elections in the discharge of his official duty.

9. Police for the city of London and liberties to be sworn in as constables.

10. Not to disqualify from receiving half-pay.

11. Superannuation Fund to be provided by common council for constables.

12. Rates of superannuation allowance.

13. Allowance may be made to police for extraordinary expences or exertions, or for wounds.

14. *The commissioner, subject to the approbation of the court of aldermen and secretary of state, may make regulations for the management of the police force.*—And be it further enacted, that the said commissioner may from time to time, subject to the approbation of the said mayor and aldermen, or any three of them, and also of one of her Majesty's principal secretaries of state, frame such orders and regulations as he shall deem expedient relative to the general government of the said police force, the places of their residence, the classification, rank, and particular service of the several members, their distribution and inspection, the description of arms, accoutrements and other necessaries to be furnished to them for the performance of their duty, and all such other orders and regulations relative to the said police force as the said commissioner shall from time to time deem expedient for preventing neglect or abuse, and for rendering such force efficient in the discharge of all its duties, and shall from time to time send to the secretary of state, and also to the lord mayor of the said city, such returns of the state of crime and conduct of the police within the said city as the secretary of state or lord mayor shall severally require; and the said commissioner may at any time suspend or dismiss from his employment any man belonging to the said police force whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same, reporting the same from time to time to the lord mayor; and when any man shall be so dismissed or cease to belong to the said police force, all powers vested in him as a constable by virtue of this act shall immediately cease and determine, and he shall forthwith return to the said commissioner, or to such person as he shall appoint to receive the same, the clothes, arms, and other necessaries with which he shall have been furnished; and if any man shall neglect or refuse so to do, such man, being convicted thereof before any justice of the said city, shall be committed to the house of correction for the said city for any term not exceeding the space of one calendar month, unless the clothes, arms, and other necessaries shall be sooner returned; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over, wherever the same may be found.

15. Penalty on constables for neglect of duty.

16. Penalty on persons assuming the dress, &c. of constables.

17. Constables not to resign without leave or notice.

18. Powers of the police.

19. Assaults on Policemen. Penalty.

20. Commissioners of police may regulate the route and conduct of persons driving stage carriages, cattle, &c. during the hours of divine service.

21. Proprietors of stages not liable to penalties for so deviating.

22. Regulations for preventing obstructions in the streets during public processions.

23. Warrants of the city justices may be executed within the home counties, and warrants of the county justices may be executed in the city of London.

24. In case of emergency the Metropolitan Police may act within the city of London under the authority of the secretary of state upon the requisition of the lord mayor, and the city police may act within the Metropolitan District.

26. In case of absence of the commissioner, the officer next in authority to act.

26. Public houses to be shut on the mornings of Sundays, &c.

27. Publicans prohibited from supplying liquors to persons under sixteen years of age.

28. Regulation of coffee houses, cook shops &c.

29. Keepers of cook shops, &c., permitting internal communication with public houses.

30. Power to enter unlicensed theatres.

31. Places used for bear baiting, cock fighting &c.

32. Any justice or commissioner empowered to authorize superintendence of police to enter gaming houses.

33. Proof of gaming for money, &c. not necessary in support of informations for gaming.

34. Penalty on pawnbrokers receiving pledges from persons under the age of 16.

35. Prohibition of nuisances by persons in the thoroughfares.

36. Penalty on persons discharging firearms near to dwelling houses.

37. Drunkards guilty of indecent behaviour may be imprisoned.

38. Children, &c. riding behind carriages.

39. Prohibition of dog carts.

40. Street musicians to depart when so required to do.

41. Prohibition of other nuisances.

42. Mad dogs, &c.

43. Compensation for hurt or damage, not exceeding 10*l.*

44. Constables may apprehend offenders whose name and residence is not known.

45. Constables may take into custody persons throwing mud into the river.

46. Aggravated assaults.

47. Removing furniture to evade rent.

48. Police constables and persons aggrieved may apprehend certain offenders.

49. Horses, carriages, &c. of offenders may be detained.

50. Persons apprehended without warrant to be taken to the station house.

51. Power to take recognizances at station houses on petty charges.  
 52. Power to bind over persons making charges.  
 53. Condition of recognizance. In default of appearance the recognizance to be forfeited.  
 54. As to offences for which no penalty is appointed.  
 55. Power to appoint clerks and officers.  
 56. Corporation to appoint committee to carry the act into execution.  
 57. Contribution of corporation of London to the police force.  
 58. Power to make rates.  
 59. How places within the liberties to be rated.  
 60. Buildings, &c. partly in each of two wards to be assessed wholly in the ward in which the larger part is situated.  
 61. In houses let out in apartments, the lodgers to be deemed the occupiers.  
 62. How houses are to be rated which are let at small rents; and for the better recovery of the rates.  
 63. Composition for rates to extend to future rates.  
 64. Persons receiving the rents to be deemed the owners.  
 65. Ready furnished houses how assessed.  
 66. Directing in what manner empty houses shall be assessed.  
 67. For making copies of rates.  
 68. Committee may rectify errors in the rates.  
 69. Committee to deliver a copy of any assessment in which an alteration shall be made to the alderman or his deputy, and he or any of the common councilmen may appeal against the alteration to the Court of Aldermen.  
 70. For assessing public buildings and vacant spaces of ground.  
 71. Corporation or committee to have the power of inspecting tax assessments, &c.  
 72. Rates how to be recovered.  
 73. Costs of distress. 57 G. 3, c. 93.  
 74. Form of warrant of distress.  
 75. Proceedings against persons removing goods without the rates being paid.  
 76. Actions may be brought for rates.  
 77. Rates may be remitted on account of poverty or otherwise.  
 78. Owners and occupiers of markets to be subject to the same payments as farmers and lessees.  
 79. Beadles, &c. to collect the rates quarterly, and enter the same in books kept for that purpose. Beadles not to retain money in their hands. Penalty for neglect of duty. Beadles to give bond.  
 80. If beadles, &c. become unable to pay, the money to be again assessed.  
 81. Rate books to be received as evidence.  
 82. Charges of ward clerks to be paid out of the rates.  
 83. Common council to determine the number of beadles.  
 84. Alderman, &c. of each ward to make orders and regulations within their respective wards.

85. Expences of ward clerks and beadles, &c. to be paid out of the rates levied under this act.  
 86. Rents of present watch-houses, until disposed of, and other liabilities, to be paid out of the rates.  
 87. Allowances to superannuated watchmen, &c.  
 88. How powers of act to be exercised when there is no alderman.  
 89. Proviso for watch rates already imposed.  
 90. Any surplus to be applied in aid of the payment of the ward clerks, &c.  
 91. Accounts to be kept by the chamberlain.  
 92. Accounts to be laid before parliament yearly;  
 93. And before the common council.  
 94. Election of ward constables suspended.  
 95. If this act is repealed, the election of ward constables to be revived.  
 96. Persons rated not liable to any watch.  
 97. Recovery and application of forfeitures.  
 98. Scale of imprisonment for nonpayment of penalties.  
 99. Convictions to be drawn in the following form.—Form of conviction.  
 100. Justices may summon for the recovery of penalties.  
 101. Appeal.  
 102. Persons paying police rate, or being freemen, not to be deemed incompetent witnesses.  
 103. No proceedings to be quashed for informality, or defect in warrant, &c.  
 104. Expences of this act.  
 105. Public act.
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- ## MODE OF EXAMINING ARTICLED CLERKS.
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- INFANT SIGNING COGNOVIT.**
- To the Editor of the Legal Observer.*
- Sir,
- Two of your correspondents have answered "An Old Subscriber:" permit me to be a third. Your correspondent 'A. E. F. appears somewhat amused with the old gentleman, but does not answer his question satisfactorily; and "Justitia" does not attempt to answer it at all. A. E. F. should remember that an infant can bind himself for necessaries, and as an infant would have no defence to an action for necessaries, it is in such an action that a cognovit would most likely be given. Though it had long been decided that an infant could not execute a warrant of attorney, it was still a doubtful question whether an infant could not execute a cognovit in an action for necessaries; but the case of *Oliver v. Woodruffe*, reported at p. 430, of the last volume of the Legal Observer, put this question at rest, by deciding that an infant could not execute a cognovit even in action for necessaries; to this case I beg to refer "An Old Subscriber." It will be perceived that this case was only decided last Hilary Term, and that it was admitted in argument that the point had not been decided

before; and though it was decided in the Exchequer, the Court took time to consider before giving judgment; so that after all "An Old Subscriber's" observations on this particular question, are, I think, entitled to a courteous consideration, though his general complaint of the severity of the examinations is without foundation.

S. P.

[It would be severe to reject a candidate who could not answer *all* the questions put to him, but it cannot be considered as an improper mode of examination that *some* of the questions should be founded on recent statutes and decisions of a general and important nature. It is probable that a mistake on a new point of law or practice would not be fatal to the candidate. Ed.]

### **THE NEW REGULATIONS OF THE POST OFFICE.**

The following notice to the public has been issued from the General Post Office:—

In compliance with the orders of the Lords of the Treasury, the following alterations in the rates of postage will take place on and after the 5th of December.

The system of charging letters by enclosures is abolished; all letters, therefore, whether General Post, Foreign, or Colonial, with the exception of local penny post letters, and of the local letters passing through the Dublin and London local posts, will be charged by weight, according to the following scale:—

On letters *not exceeding half an ounce*, there will be taken one rate of postage.

On letters above half an ounce, and *not exceeding one ounce*, two rates of postage.

On letters above one ounce, and *not exceeding two ounces*, four rates of postage.

On letters above two ounces and *not exceeding three ounces*, six rates of postage.

On letters above three ounces and *not exceeding four ounces*, eight rates of postage.

It cannot fail to be observed that after the first ounce in the above scale, *no distinction is made between the ounce and a fraction of an ounce*. A letter, for instance, which turns the ounce weight, is liable to four rates of postage; and a letter weighing a fraction above two ounces is liable to six rates of postage, and so on. This regulation, however, will not affect the mode of charging *French rates* on letters to or from France, and through France, as the present system of charging French rates on such letters must continue in force; *viz.*, a single French rate for each quarter of an ounce, *exclusive*.

A single rate of *inland postage* on all general post letters, transmitted between places in the United Kingdom, will be the uniform rate of 4d., *except in those cases where the letters are at present subject to lower rates than the sum*

*specified, and except in the case of foreign letters transmitted by packet, on which the rates of inland postage at present taken will be continued, although the charge will be calculated in both cases by weight, as before mentioned, and not by enclosures.*

No inland rate of postage will be taken on letters between the British West Indies and the United Kingdom, or on those between Gibraltar, Malta, the Ionian Islands, and the United Kingdom. The last description of letters must, however, be addressed "*via Falmouth*," or they will otherwise become subject to the present inland rates, as they will be forwarded *through France*, and be treated as *foreign letters*.

As the rate to and from North America already is an uniform rate of one shilling for a single letter, the rate of postage on letters *conveyed by packet* between the United Kingdom and all the British colonies (with the exception of letters to the East Indies, which are to be charged when they are sent or received *via Falmouth* 2s. 6d. as at present), will be an uniform single rate of one shilling, advancing on all letters exceeding half an ounce, according to the scale of weight already laid down.

No penny postage will hereafter be charged upon letters passing through the General Post, except on those which are franked. *Franks*, however, *will still be liable to the local rates* of a penny or two pence, as at present, when passing through penny posts in the country, or the local posts of London and Dublin.

The additional rates heretofore chargeable on letters conveyed by the route of the Menai and Conway Bridges, that of Milford and Waterford, and the additional half-penny on letters conveyed by mails in Scotland, will be abolished.

No letter which is not franked, or which shall not be either dispatched by, or addressed to, a public department on the public service, shall be forwarded when above the weight of *sixteen ounces*, with the exception of those from foreign countries or the colonies, addressed to the United Kingdom, whether they shall arrive by packet or by private ship, and *deeds and parliamentary proceedings*, when addressed to the colonies, to be forwarded by packet. The letters will be delivered according to their address, but at the rates of postage to which they will be liable by the scale before given.

With respect to *deeds and parliamentary proceedings*, they will be treated according to the existing regulations, and will be charged with the rates they are at present liable to, except where those rates are higher than they would be under the new system. *Parliamentary petitions*, above sixteen ounces within the United Kingdom, will be treated in a similar manner. Letters evidently intended to be franked, but which have become liable to postage by wrong dates, &c. &c., will be forwarded, even if above the weight of sixteen ounces, but at the rates already laid down.

All letters *exceeding the weight of an ounce* (with the exception of letters addressed to France) must have the postage paid in advance. Should the postage not be paid in

advance, the letters will be charged with double the rates to which they would otherwise be liable.

The charge on letters transmitted by *private ships* between the United Kingdom and places beyond sea (with the exception of the Channel Islands, the Isle of Man, and places within the limits of the East India Company's Charter,) will also be taken by weight according to the scale before given. The single rate of postage on such letters will be 8d. when posted or delivered at the port of departure or arrival, and one shilling when posted or delivered at any other place within the United Kingdom. These rates of 8d. and 1s. will apply also to letters between this country and China.

The rates on letters conveyed by private ship between the United Kingdom and countries comprised within the limits of the East India Company's Charter, will be the present uniform rate for *sea postage* of 2d. outwards, and 4d. inwards, for letters not exceeding the weight of three ounces, when posted or delivered at the ports of departure or arrival respectively; beyond that weight an uniform rate of 1s. per ounce will be taken as *sea postage*. When, however, such letters are posted or delivered at any other place than the port of arrival and departure, they will be liable to the charge of inland postage, calculated according to the new scale of weight, in addition to the *sea postage* before mentioned. Letters transmitted by private ships between places within the United Kingdom must be treated in the same manner as General Post letters forwarded by the regular mails between such places, and charged with the same rates of postage, according to the scale of weight before laid down. Letters conveyed by private ships between Great Britain and the Channel Islands, and the Isle of Man, will be treated in a similar manner.

All letters that cannot be forwarded, owing to their exceeding the prescribed weight, will be sent to the Dead Letter Office, in accordance with the existing regulations.

By Command.

(Signed) M. L. MABERLEY,  
Secretary.

LONDON DISTRICT POST,  
*Including Twopenny and Threepenny Delivery.*

1. Any letter not exceeding half an ounce, *provided the postage be pre-paid*, to be charged one penny.

2. The twopenny charge on General Post letters delivered in the London District, to cease.

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## SUGGESTIONS TO THE PROFESSION TO PRE-PAY ALL LETTERS IN THE LONDON DISTRICT.

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*To the Editor of the Legal Observer.*

Sir,

Allow me to suggest the benefit of a general understanding among London solicitors, that all letters to each other, sent through the

London District Post should be pre-paid. It is obvious that the practice must be general and mutual, or it will operate unfairly in favor of those who do not pre-pay. Perhaps the Law Institution will recommend it to its members, if not too small a matter for its attention; or, perhaps without such recommendation, it may be generally considered shabby not to pre-pay, unless in writing to those who do not. I presume the delivery will be as safe pre-paid, as not.

ONE, &c.

Sir,

In order that the profession may have the full benefit of the reduction in the rates of postage, I think the practice of pre-payment on all letters by the Penny Post should be established among solicitors in the metropolis as regards letters sent to members of the profession. The increased dispatch in the delivery of letters will be a great advantage arising from the new regulation, if the plan of pre-payment is generally adopted

D. H.

Sir,

The alterations in the charge of postage of letters within the London District render necessary some definite rule or practice in the profession. My own impression is, that on every professional letter between members of the profession there should be the pre-payment, although I feel that in some cases it might with propriety be otherwise—still, the advantages of a fixed rule will, I think, be found preferable.

AN OLD SUBSCRIBER.

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## SELECTIONS FROM CORRESPONDENCE.

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### INHERITANCE ACT.

*To the Editor of the Legal Observer.*

Sir,

The question submitted by Y. Z., at p. 59 of your present volume, is one which had before suggested itself to my mind, and I incline to the belief that, contrary to the intentions of the framers of the act 3 & 4 W. 4, c. 106, cases may occur in which a child may be prevented from inheriting the property of which its parent died seised; thus, in the case stated by Y. Z., it appears, that A. having purchased land, dies intestate, leaving two daughters; afterwards one of them dies intestate, leaving a son. The son will not inherit his mother's share, because the second section of the above act enacts, that in every case descent shall be traced from the purchaser, and that the person last entitled shall be considered the purchaser, unless it can be proved that he inherited it, in which case the person from whom he inherited the same shall be considered to have been the purchaser—the moiety, therefore, of which one daughter died seised will descend upon her son and the surviving daughter in equal proportions.

The point is one of great importance, and I hope some of your able correspondents will consider the question.

SHEPTON.

## LAW OF JOINT INTERESTS.

Sir,

I find it stated in your number for the 16th of November last, in the essay on the Law of Joint Interests, p. 40, as follows:—

"Lastly, we may advert to the *jus accrescendi*, as to its paramount effect, and the incapacity of a joint tenant to make a will, unless it is the direction of a use under the statute of uses, &c., and it is to be observed that notwithstanding the recent statute of wills, this point is left as it was before that act. (1 Vic. c. 26, s. 4.)"

Now on reference to the act, I find (sec. 3.) "That it shall be lawful for every person to devise, bequeath, or dispose of, by his will, executed in manner hereinafter required, all real estate and all personal estate, which he shall be entitled to, either at law or in equity, at the time of his death;" and this section also says that the power thereby given shall extend to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may become entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will.

And by sec. 24 it is further enacted, "that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

It would therefore, I conceive, be held, that a devise by a joint tenant (made during the continuance of the joint estate,) would be valid, if he before his death, and after the execution of his will, acquired the fee in severalty in the property so devised. See Sugden's Essay on the Law of Wills, p. 79, 80; and if this be the case, the decision in *Churchman v. Ireland*, 1 Russ. & M. 250, would not now be held law, were a similar case to arise at the present day.

A. B. B.

## INTERESTS OF MARRIED WOMEN,

3 &amp; 4 W. 4, c. 74.

Sir,

Your correspondent "x" has somewhat briefly given his opinion upon this point, and I beg, with all due deference, to state that he cannot have sufficiently considered the question; or, I think, he would not have termed the interest of the daughter a "*reversionary interest*," or in fact, have suggested that a *feme covert* cannot charge her reversionary interest in *chooses in action*;" which has no application whatever to the interest passing under this devise.

The question of acknowledgment would appear upon the points submitted by "J. B. W." to have "something to do with the matter;" for if the interest is to be regarded as one *real*, and not *pecuniary*, there would be sufficient grounds for a doubt as to the necessity of an acknowledgment.

A donee (for the interest in the *produce of land directed to be sold*, is in truth a *devise*, and not a *legacy*) must receive the property in the quality in which it is given to him, and cannot intercept the purpose of the devisor; nevertheless "they may by agreement amongst themselves, elect to take contrary to that purpose."

The obvious desire of the testator in this case was, that there should be a sale for the convenience of division; and it has been held that in a similar case the donees take their several interests as *money* and not *land*, provided that the donees do not wholly fail, for then the interest must be taken as *land*.

The Master of the Rolls, in the conclusion of his judgment (*Whytall v. Kay*), 2 M. & K. 765,) held that "the *produce of the real estate* being undisposed of, descended to the plaintiffs," there was therefore a conversion. *Pearson v. Lunn*, 17 Ves. 104, decided that there may be an election, but *quære*, what shall amount to an election? The daughter by disposing of the property by an express description, adapted to the purpose of the testator (*directing a conversion*) and therefore treating it as *personality*, would surely be deemed to have determined the constructive character thereof, and to have made her election, 13 Ves. 345; 1 P. Wms. 172.

Is not the husband entitled to the portion of the purchase money, as a marital right, subject to the wife's equity to a settlement?—if so, the husband may charge, the wife joining.

H. B.

## PRACTICE AT THE CHANCERY REPORT OFFICE.

Sir,

I hope I may be allowed to call your attention to a matter that concerns, in my humble opinion, materially, the interests of the profession, and it may be said, too, as well as that of the suitors in chancery. I allude, Sir, to the mode now adopted on filing the various and oftentimes highly important documents that emanate from the offices of the Masters in Chancery, which seems to require reformation, as will be seen in the sequel. I take it you are aware that after a Master has signed his report, it is indispensable to have the original filed with the Clerk of the Reports before the acting solicitor can proceed further effectually with his client's cause.

Now, Sir, what I have to complain of, is that at the time of leaving a report, or whatever else it may be, to be filed, no receipt or acknowledgement is given for your document. So that if, per adventure, your report or certificate happens to be mislaid or lost, you have no means of proving its having been left other than your own *bare* word, which, indeed, will avail you nothing, as I have recently had the mortification to experience to my cost.

I need hardly remind you of the mischief that may ensue to a client from a *delay*, thus vexatiously occasioned, before a duplicate of the document can be obtained. But the evil, Sir, does not rest here. What account is a clerk to give his principal of the missing docu-

ment? how can he satisfactorily do so? and who is to bear the expense of the duplicate in question? The clerk therefore having no voucher to produce must necessarily be the sufferer either in reputation or pocket, if not in both. As one of that body, whose interests are thus liable to be jeopardised, I look to your indulgence to give publicity to this, in order that some influential member of the profession may be induced to take up the matter, and thereby prevent a repetition of the like serious inconvenience.

AN OLD SUBSCRIBER.

SHERIFFS' FEES.—POUNDAGE.

Sir,

I am much obliged by the notice which your able correspondent F. W. D., has taken of my letter (at p. 55) on the subject of the double set of fees now received by the sheriffs on writs of execution. He gives a very confident opinion on the case, and I think rightly so; but is he aware that the undersheriffs, in their returns to writs filed at Westminster, have, ever since the promulgation of the New Table, claimed and deducted the poundage in addition to the fixed fees? and that the officers of the Court, on being appealed to, state, that it is a matter of doubt whether they are entitled to them or not? The undersheriffs also, in cases where the damages are unsatisfied, are in the daily habit of applying to the plaintiffs, demanding of them personally this very poundage; and I am even told, that in some instances, have proceeded to enforce their claim at the Court of Requests, where the sum has been under 40s. That it is a most oppressive and unjust fee, no one can for a moment doubt, and I do hope that some steps will be speedily taken to determine whether the sheriff is right or wrong in demanding it.

A COUNTRY ATTORNEY.

Sir,

Having noticed in your useful publication a letter signed "A Country Attorney," and another signed "F. W. D." on the subject of sheriff's fees and poundage, I beg to refer them and your readers to the case of *Davies and Griffiths*, reported in the 4th Vol. of Messon & Welsby's Exchequer Reports, p. 377, as bearing on the question that the sheriff's right to poundage is not affected by the statute 1 Vict. c. 55, or the table of fees made under it. I would add, that the poundage is the only fund to which the sheriff has to look for indemnity against a variety of expenses which he is necessarily put to in settling the conflicting claims which frequently arise between adverse executions, and under bankruptcies and insolvencies, and which, as the sheriff is ordinarily allowed no costs, leaves a very moderate surplus at the termination of the year of sheriffalty applicable to the general heavy expenses of the office. It is very easy, in these times, to cavil at any fees payable to any public officer; but, when the responsibility and risks of the office is taken into consideration the poundages of 5*l.* per cent. on the first 100*l.*

and 2*½* per cent. on the residue, is neither very enormous nor extravagant.

ANOTHER COUNTRY ATTORNEY.

SUPERIOR COURTS.

Vice Chancellor's Court and  
Lord Chancellor's Court.

MARRIED WOMAN.—SEPARATE USE.

A testator gave his daughter, then unmarried, all his leasehold estate, and all his monies, public stocks, and all his personal estate and effects, to her separate use, free from the control of any husband she might marry and from his debts, and appointed her sole executrix. She proved the will, and married. By articles executed on the marriage part of the public stocks were settled in trust to her separate use: Held, by the Vice Chancellor that the leasehold estate and other personal property given by the will were to her separate use, and not liable in equity to be taken in execution for the husband's debts. But the Lord Chancellor suspended his judgment, and required security for the property pending the suit.

The defendant Holmes, having recovered a verdict for 200*l.* in an action of trespass against William Newlands, the plaintiff's husband, entered up judgment on the 25th of November, and issued a writ of execution to the sheriff of Surrey, whereupon Mrs. Newlands filed this bill, which stated that her father, John Peter Reind, by his will, dated the 3d of October 1833, bequeathed to her all his property whatsoever, and appointed her sole executrix, and specifically directed that any property he might have given or should give to her, should not be liable to the interference or control in any way of any person or husband she might be married to, or liable to his debts, and that her receipt alone should be a discharge for all the money and effects he might leave to her, and that she should dispose of the same by her will as she pleased, notwithstanding her coverture. The bill further stated that the plaintiff proved the will on the 23d of October 1833, and intermarried with William Newlands on the 20th of November following, and that she had continued ever since to reside with him in the house No. 19, West Square, which, with the furniture, plate, &c. therein, formed part of the property bequeathed to her by her father, or had been purchased with it, and that she had not at the time of her marriage or since the death of her father any property except that which she took under his will; and therefore she submitted that her husband was a trustee for her of the legal estate and interest in the leasehold premises, and in the goods and chattels therein contained to her separate use. Upon these statements in the bills, supported by affidavits, an injunction was issued on the 28th of November last to restrain the second defendant, Mr. Paynter, sheriff of Surrey, from executing

the writ against the leasehold premises, No. 19, West Square, or the goods therein contained.

Mr. Jacob and Mr. Bethell moved to dissolve the injunction. They read affidavits in support of the motion, which stated, among other things, the witnesses' belief that a settlement of 6000*l.* bank stock, part of the property left to plaintiff by the will, was made upon Mrs. Newlands at the time of her marriage. This fact, if true, ought to have been stated to the Court when the injunction was applied for. They contended that this being the case of a gift to a woman absolutely, and she being also executrix, there was no ground for drawing any distinction between legal and equitable ownership. Had the legal ownership been in trustees,—had the marriage been before the death of the father, or had the bequest been to a married woman, the case would be different. The marriage amounted to an unqualified gift of the wife's property to the husband, and there was no contract or stipulation to limit the effect of the gift. On the contrary, the settlement of a portion of the property raised a presumption that, as to the rest, it was meant the husband's marital rights should prevail. The case was the same as *Massey v. Parker*,<sup>a</sup> and must be governed by that case.

Mr. Knight Bruce and Mr. Russell were for the plaintiff.

The Vice Chancellor, without hearing them, said he thought the point was very simple. If a man married a woman who had personal chattels, at law, *prima facie*, the act of marriage constituted a gift of those chattels to the husband. If the wife had a term of years, either legal or equitable, the law said that during coverture the husband might assign the term if he pleased, and if he survived the wife he took it as a gift by marriage, and was not obliged to administer to her, for the purpose of constituting the term in him in virtue of the wife. If he died in her lifetime, the term survived to her. With respect to choses in action, they remained to the wife during coverture, unless the husband during the coverture reduced them into possession. But he always understood that a father might make a gift to the separate use of his child being a daughter, and in this case it appeared very plain to him that the testator expressed an intention that there should be a trust for the separate use of his daughter, although he had not so fully worked out that intention as he might have done. For having given the property to his daughter, and appointed her sole executrix, he specifically directed that any property he might have given or should give to her should not be liable to the interference or control in any way of *any person or husband* she might be married to (which shewed what an inaccurate expression this gentleman used, because he imagined she might be married to a person who might not be her husband) or liable to his then present or future debts, but that her receipt alone should be a discharge for all the money or effects he might give or leave to the plaintiff,

and that she should dispose of the same by her will and testament as she pleased, notwithstanding her coverture. His Honor apprehended that when the testator died, and his daughter proved the will, she certainly at law, became the absolute owner of all the property of a personal nature that the father gave her by his will. And when she married, she did at law give to her husband the complete power to dispose of all the personal property. But then the question was, whether when the husband had married a woman who took the personal property under such a bequest as this, he did not of necessity subject the marital right and the marital powers which he acquired by marrying the executrix to that trust that was affixed by the will on the property the testator gave to his daughter. He could not but think until he was corrected by a higher authority, that the husband did, by marrying the executrix, though he clothed himself with legal rights and powers, take them subject to that trust. The marriage settlement had very properly been called to the notice of the Court. His Honor had read it through, and found it was solely confined to a sum of 6000*l.* Bank Stock, which was admitted to have been part of the father's estate. It was not a settlement of Bank Stock to the separate use of the daughter, in the same manner in which she took it by the will, but on the contrary, it appeared to him to be a reduction and limitation of the power, which as the *cestui que trust* of her father's will, she had over it; for the stock was transferred into the names of three persons in trust for her separate use for life, and then if she happened to survive her husband, it was to go to her absolutely; but if her husband survived her, then she had no power of disposition over it, otherwise than by a testamentary disposition, and so much as she did not dispose of by will would belong to her husband. It was quite clear by the constitution of the settlement, that the husband was let in to participate for his own benefit in the Bank Stock, to the prejudice and diminution of those rights the wife had under her father's will. If there were express words that in consideration of the settlement being so made, the husband should become absolute owner of all the wife's other property, then that would be a relinquishment of her rights over all the other property; but the settlement was totally silent as to that, and he thought it would be a new thing to say that where the husband derived a benefit from the wife's property, and gave her no benefit, and nothing elsewhere was said or treated of, except what related to the wife's property, it should *ipso facto*, give the husband all the property not contained in the settlement. His Honor could not but think that, according to the true construction of the father's will and the settlement taken together, the wife did stand in this position, *viz.* that the husband, so far as he had any right under the marital power, had that right as trustee for his wife, and therefore he thought the chattels were not seizable, in equity, though they might be at law, and that

<sup>a</sup> 2 Myl. & K. 174, and 9 Leg. Obs. 203.

the motion to dissolve the injunction must be refused with costs.

The defendants appealed to the *Lord Chancellor*.

Mr. Jacob, Mr. Richards, and Mr. Bethell, in support of the appeal motion, urged in addition to the arguments pressed on the *Vice Chancellor* on behalf of the defendant, the further argument that if the injunction should be permitted to stand, the defendant would be without any security for the property pending the suit.

Mr. Wigram and Mr. Russell for the plaintiff, supported the *Vice Chancellor's* view of the question, and referred to the cases of *Jones v. Salter*,<sup>b</sup> and *Anderson v. Anderson*.<sup>c</sup>

The *Lord Chancellor* observed that there are two cases yet before him for judgment on the question raised in the course of the present motion. That question was one of the greatest nicety, and he might add, too, of the greatest difficulty; for whichever way he decided, he must overrule several cases, which were hitherto relied on as authorities. His Lordship proposed, however, to pronounce his judgment on these cases at a very early period—certainly before Christmas—and he was most unwilling to say anything, indeed most anxious to avoid saying anything on the motion before him, that could be considered as an opinion on the question of separate use. One thing, however, seemed to him quite clear, that under any circumstances, the order of the *Vice Chancellor*, confirming the injunction, ought not to be allowed to stand. Considering the state of the question, and the probability of an early decision, it might have been supposed that the Court below would, at all events, have interfered for the protection of the rights of the parties until that question was set at rest; but, on the contrary, the order continuing the injunction left the defendant, who was the claimant, without any security for his debt. That, in his Lordship's opinion, could not be right. The plaintiff must either go before the Master and give security for the debt and costs until the decision of the cause, or she must pay the money into Court. The sheriff would then give up possession, or be restrained from taking it if he was not in possession. The injunction to be dissolved, and the costs returned to the defendant.

*Newlands v. Holmes and another*.—Sittings at Lincoln's Inn before the *Vice Chancellor*, December 2d, and before the *Lord Chancellor*, December 5th, 1839.

### Exchequer in Equity.

#### LEGACIES. — MARRIAGE PORTIONS. — ADEMEPTION.

A father, by his will, gave legacies and rent-charges to his two daughters, and on their marriages subsequently he secured a provision to one by a bond, and to the other he

<sup>b</sup> 2 Russ. & Myl. 208.

<sup>c</sup> 2 Myl. & K 427.

gave real estate, purchased by him after the date of his will: Held, that the provisions so made for the daughters on their respective marriages were not an ademption of the provisions made by the will.

This was a bill, filed by Mr. Thomas Davys, praying a declaration by the Court that the provisions therein and hereafter stated, made by his father, Thomas Davys, on the respective marriages of the plaintiff's two sisters with the defendants, Mr. Charles Boucher and Mr. Robert Williams, were an ademption of the provisions made for them by their father's will. The bill stated the said will, bearing date in July 1829, and that the testator thereby gave to the plaintiff and his two sisters, Mary and Betsy Davys 100*l.* each, and thereby devised his freehold estate at *R.* to his wife for her life if she continued a widow; and after her death or second marriage to the plaintiff, his son, in fee, subject to and charged with an annuity of 50*l.* to the testator's daughter Mary, her heirs and assigns, and with a like annuity to his daughter Betsy, with limitations over in case either of his daughters died without issue before her annuity became payable, and the testator gave the residue of his estate to his wife absolutely, and appointed her his executrix. The testator afterwards purchased a freehold estate at *C.*, and by a codicil to his said will, made in April 1831, he devised the same to his two daughters in fee, as tenants in common. The daughters married soon after the date of the codicil, and on the marriage of one, Mary, to Mr. Boucher, the testator gave a bond for securing 1400*l.*, 1000*l.* part thereof as an immediate provision, and 400*l.* the residue, to be paid at testator's death; and on the marriage of Betsy to Mr. Williams, the testator settled the lately purchased estate at *C.*, and 400*l.* as a provision for that marriage. The questions raised on the bill and answers were, whether these provisions, made by the testator on the marriages of his daughters amounted to an ademption of the provisions made for them by his will.

Mr. Temple and Mr. Puller for the plaintiff. The testator could not intend both provisions to have effect. The gifts on the marriages of the daughters were far more beneficial to them than the gifts under the will. It was not necessary that the gifts should be *ejusdem generis*, or of the same amount, in order to make one deem the other. They cited in support of their argument *Weston v. Lord Lincoln*,<sup>a</sup> *Warren v. Warren*,<sup>b</sup> *Ex parte Dubost*,<sup>c</sup> *Weul v. Rice*,<sup>d</sup> *Lloyd v. Hurrey*,<sup>e</sup> *Jones v. Morgan*,<sup>f</sup> and *Lord Durham v. Wharton*.<sup>g</sup>

Mr. Spence and Mr. Sharpe, for Mr. and Mrs. Boucher; and Mr. Simpkinson and Mr. Follett for Mr. and Mrs. Williams, contended that in order to hold one provision to be deemed by another, both must be of the same description, though not exactly of the

<sup>a</sup> Ains. 328.

<sup>b</sup> 1 Bro. C. C. 305.

<sup>c</sup> 18 Ves. 140.

<sup>d</sup> 2 Russ. & M. 251

<sup>e</sup> Id. 310.

<sup>f</sup> 2 Y. & C. 403.

<sup>g</sup> 3 Clark & F. 196.

same value. In *Watson v. Lord Lincoln*, referred to by the plaintiff, it was held that a money portion was not an ademption of a previous provision out of real estate. They cited to the same effect *Holmes v. Holmes*,<sup>h</sup> and *Freemantle v. Banks*,<sup>i</sup> and on other points of their argument they referred to the cases of *Debeze v. Mann*,<sup>k</sup> *Goodfellow v. Burchett*,<sup>l</sup> *Trimmer v. Bayne*,<sup>m</sup> *Shudul v. Jekyll*.<sup>n</sup>

Mr. Temple, in his reply, referred to the case of *Brown v. Beck*,<sup>o</sup> to show that the doctrine of ademption might be applied to real estate.

Mr. Baron Alderson, after stating the material parts of the will as above stated, and that subsequently to the date of the will the testator purchased an estate called Petton, and then made a codicil by which he devised that estate in fee to his two daughters, as tenants in common, said that was the state of circumstances at the time of the marriage of the testator's daughter Mary, in April, 1832, with the defendant Boucher; and on that occasion the testator executed a bond for 1400*l.* with interest on 1000*l.* payable immediately, and with interest on the remaining 400*l.* payable from his death, as a portion to his said daughter. It was contended that this provision was an ademption of the benefits contained in his will. Subsequently, on the marriage of Betsy with the defendant Williams, at the end of the year 1832, a settlement was made by the testator of the estate of Petton upon her, and the issue of that marriage; and a sum of money was also advanced by him, amounting to about 400*l.* altogether; and this advance, it was now contended, adeemed the provisions made by the will for Betsy. The principles on which these questions turn might be very shortly stated. Where a parent or person in *loco parentis*, gives a legacy to a child by way of portion, and afterwards, upon marriage, or any other occasion calling for it, makes advances in the nature of a portion to that child, that advancement will amount to an ademption of the gift by will; and a Court of Equity will presume he meant to satisfy the one by the other. It might also be taken, that the legacy of a portion, meant the legacy of a definite sum, that being, as Lord Rosslyn expressed it in *Freemantle v. Banks*, its meaning *ex vi termini*. Hence the bequest of a residue did not fall within the rule. Further, in order that there might be an ademption, it was required that the provisions should be *eiusdem generis*. Thus in *Holmes v. Holmes*, a bequest of 500*l.* was not adeemed by an advancement of a gift of one-half of the stock of jewellery, made on the occasion of the parent subsequently taking his son into partnership. Subject, however, to those restrictions, it might be stated, that mere difference of amount, and slight circumstances of difference in the terms of payment between the portion given by will and the advancement subsequently made, would

not prevent the presumption that one was an ademption of the other. But as far as his own researches had extended, he did not find any instance of that principle having been extended to devises of real estate, and he did think that so to extend it would be to repeal that provision of the Statute of Frauds which applied to the revocation of wills of real estate. The case of *Brown v. Park*, which was cited for that purpose did not prove it. That case went off on a collateral ground altogether, and the only argument which it could be considered to afford was, that this difficulty was not suggested in argument; the case not requiring it in order to produce the decision. If these principles were applied to the present case, it would be found that the annuities given by the will were not *eiusdem generis* with the provisions made upon the marriages of the two daughters; the advancement of one being by an advance of money by bond, of the other, by settlement of land and advance of money. The gift by will was an annuity to each daughter, contingent as to amount, depending upon the event of survivorship between the sisters and of one of them dying without issue before the death of their mother, and not payable at all events until after the death or second marriage of their mother—a totally uncertain period of time. Upon these grounds he was of opinion that the presumption contended for did not arise, but if it did, the parol evidence in the case shewed that at the time of making both advances the testator intended them to be in addition to the provisions of his will. Upon the whole therefore his Lordship thought the plaintiff had failed in making out his case, and that the bill should be dismissed with costs.

*Davys v. Boucher and others*, sittings at Serjeant's Inn after Trinity Term, 1839,

### Exchequer Chamber.

#### On Error from the Queen's Bench.

##### NUISANCE.—CANAL COMPANY.—PLEADING.

Certain individuals formed themselves into a company and obtained an act of parliament to make a navigable canal, and to receive tolls. The act did not in terms impose on them the duty of keeping the navigation clear from obstruction; but held, that by common law that duty was imposed upon them, and that in a case where damage had arisen from an obstruction which had not been removed after reasonable notice &c. to provide against the dangers of which by placing lights &c. reasonable care had not been used, the proprietors were responsible in damages to the party injured, and that he might recover, if he set forth in his declaration such a state of facts as would raise in law this implied duty and liability.

Lord Chief Justice Tindal delivered judgment in this case.—The question raised in this case, where there was a plea of not guilty, was whether the declaration disclosed a sufficient cause of action against the Canal Company. The declaration stated the act by which the Canal Company was constituted, one clause of which declared that it should be lawful for the

<sup>h</sup> 1 Bro. C. C. 555.

<sup>i</sup> 5 Ves. 79.

<sup>j</sup> 2 Vern. 298.

<sup>n</sup> 2 Atk. 576.

<sup>k</sup> 2 Bro. C. C. 165.

<sup>l</sup> 7 Ves. 508.

<sup>o</sup> 1 Eden, 190.

agents and servants of the company, if any boat &c. should be sunk in the canal, to cause the same to be weighed and drawn up, and to detain such boat &c. for the expences thereby incurred. It then set forth that the canal was formed, and that the company received toll from the boats that used the same; that the plaintiff was navigating the said canal with a fly-boat; that a boat was sunk in the said canal and obstructed the navigation thereof, so that boats passed along with difficulty in the day, and were in danger during the night; that the owners of the sunken boat did not weigh or draw up the boat, of which the said company had notice, on which it became and was the duty of the said canal company to draw up and weigh the said boat &c. The declaration then alleged for breach that the company did not within a reasonable time weigh nor draw up the said boat nor remove the obstruction, nor did the company cause any light or signal to be placed over the sunken boat, so as to warn persons passing in boats in that direction of the danger of the spot, by means of which and without the default of the plaintiff, the fly-boat of the plaintiff, lawfully passing along the said canal, and for the passage of which the proprietors had received toll, not being able to avoid the obstruction, ran against the same and thereby sustained damage. The principal objection in this case to the plaintiff's right to recover, was that the clause recited in the declaration, and which is there stated as casting a duty on the company to remove the obstruction, is not in its nature obligatory, but merely permissive. We are all of opinion that neither that clause nor anything in the act imposes on the company any such obligation; and the allegation in the declaration founded on such a supposed obligation, is therefore founded on a mistake as to the effect of that clause. But admitting that to be so, then the question is whether in fact any other duty was not imposed upon this company, and further whether a sufficient breach of that duty has not been assigned. A breach of duty which arises as an inference of law need not be expressly stated, where that duty is clearly one which the law casts upon the party. Omitting therefore the improper and needless statement of duty now appearing on the face of the declaration with respect to the obligation supposed to be cast upon the company by the act of parliament, the facts stated in the declaration shew that the canal company had a right to allow boats to navigate the canal, and to receive in respect of such navigation a profit in the shape of tolls. The common law in such a case imposes a duty on the proprietors of the canal, not perhaps to repair the canal and to free it from all obstructions, but to take reasonable care that all persons who navigate the canal may do so without danger to their lives or property. We concur with the Court of Queen's Bench in thinking that there was a duty of this sort in the present case, and that this duty is founded upon the same principle as that by which a shopkeeper is rendered liable if a person entering his shop where he has exposed goods for sale, and so marked, customers should fall through a trap

door which has been left without sufficient protection and should be injured thereby. The declaration, in truth, does not contain an averment of such a duty, nor any allegation of a breach of it; but the question is whether the facts stated do not necessarily imply that such a duty did exist. On consideration, we think that there is in substance a statement of facts sufficient to raise that duty; and we think that that breach of duty is sufficiently alleged. It is averred that the company of proprietors had notice of the obstruction; that they did not within a reasonable time after such notice weigh the boat or remove the obstruction in any other way, or do that which they might with reasonable care have done; namely, place a signal or some other warning to those who were navigating that part of the canal, nor give any actual or constructive notice of the existence of the obstruction. This amounts to a breach of the common law duty to take reasonable care, and the statement that they did not, within a reasonable time after notice, remove the obstruction nor place a signal, is equivalent to a statement that a reasonable time had elapsed after such notice given. On these grounds we consider that a good breach of a common law duty has been shewn, that the declaration must be supported, and consequently that the defendant in error is entitled to judgment.

Judgment for the defendant in error.—*Barnaby v. The Lancaster Canal Company*,<sup>a</sup> M. T. 1839. Exch. Chamber.

#### Queen's Bench Practice Court.

**BAIL.—RENDER.—DISCRETION OF COURT.—COUNTY GAOL.**

*The Court has no discretion to allow bail to render their principal, where more than fourteen days have elapsed after the service of a writ upon them, although the non-render has arisen from accident.*

Busby obtained a rule calling on the plaintiff to shew cause why proceedings against the bail should not be set aside on payment of costs. It appeared that on the 7th November, Atkins junior was arrested. The defendants became bail to the action on the 14th November. Then certain pleas were pleaded by the defendant, which subsequently were withdrawn, and judgment was suffered by default; on the 30th January. A writ of summons was served upon the bail on their recognizances, on the 27th of April, and pursuant to a judge's order the original defendant was rendered to the gaol of the county of the town of Southampton, on the 18th of May; the arrest being in the county of the town of Southampton. This therefore, being to the gaol of a wrong county, was a bad render. Here, as there was no valid render until the 18th, consequently no render took place in due time.

<sup>a</sup> This was a judgment delivered in the Exchequer Chamber (Monday Dec. 2d, 1839) on a writ of error from the Court of Queen's Bench. See the report of the case in that Court, 16 L. O. vol. p. 503.

The question here turns upon the construction the Court would put upon the rule of Court T. T. 3 Wm. 4, and on the statute 11 G. 4, and 1 Wm. 4, c. 70, s. 21. The rule of Court runs in these words: "It is ordered, that from and after the 10th day of July next, where the plaintiff proceeds by action of debt on the recognizances of bail in any of the courts at Westminster, the bail shall be at liberty to render their principal within fourteen days next after the service of the process on them, but not at any later period; and that upon such render being duly made, and notice thereof given, the proceedings shall be stayed upon the payment of the costs of the writ and service thereof only." By s. 21 of the statute it is enacted, "that a defendant who shall have been held to bail upon any mesne process issued out of any of his Majesty's Superior Courts of Record, may be rendered in discharge of his bail, either to the prison of the court out of which such process issued, according to the practice of such court, or to the common gaol of the county in which he was so arrested; and the render to the county gaol shall be effected in the manner following: that is to say, the defendant, or his bail, or one of them shall for the purpose of such render, obtain an order from a judge of one of his Majesty's Courts at Westminster, and shall lodge such order with the gaoler of such county gaol, and a notice in writing of such lodgment of such order, and of the defendant's being actually in custody of such gaoler, by virtue of such order, signed by the defendant, or the bail, or either of them, or by the attorney or agent of any or either of them, shall be delivered to the plaintiff's attorney or agent, and the sheriff, or other person responsible for the custody of debtors in such county gaol shall, on such render so perfected, be duly charged with the custody of such defendant, and the said bail shall be thereupon wholly exonerated from liability as such." Here, although the terms of the rule of court and the statute have not been strictly complied with, yet it is a case where the discretion of the Court might intervene, so as to make the render in the present case valid. *Thorne and others v. Hutchinson and another*<sup>a</sup> is a very strong analogous case in point; here, after judgment, a defendant was duly rendered in discharge of his bail, notice thereof not having been given until after execution had been regularly issued and executed against the bail; the execution was set aside by the Court, and on payment of costs an *exoneretur* was entered on the bail-piece. There the render was clearly too late, notice not having been given in due time.

*Erle and Pencock* on shewing cause observed that the enactment of s. 21 of the statute required that the render should be to the gaol of the county in which the defendant's arrest took place, if the bail preferred rendering him to that gaol, instead of the prison of the Court whence process issued. But here no render took place at the gaol of the county

in which the defendant was arrested until the 18th of May, the summons being served on the 27th of April. Clearly no due render took place, for it was more than fourteen days after due service of process on the bail.

*Cur. adv. vult.*

*Coleridge, J.*—In the present case the arrest of the defendant in the original action took place on the 7th of November. On the 14th the two defendants in this action became bail alone; and on the 30th January judgment was signed in the original action. On the 27th of April, the summons in that action was served. On the 4th of May, within fourteen days after the service, the defendant was rendered in the gaol of Winchester; that was a render to the county of Southampton. It turned out, however, afterwards that the arrest took place in the county of the town of Southampton; he was therefore not rendered to the county gaol of the county in which the arrest took place, pursuant to the 11 G. 4, and 1 W. 4, c. 70, s. 21; that was consequently a wrong render in point of fact. A subsequent render took place on the 18th of May to the gaol of the county of the town of Southampton. That was however, more than fourteen days after the writ of summons was issued. That render therefore was too late, and the bail under the statute are not entitled to relief. But it is said that they are entitled to relief under the rule of T. T 3 W. 4. The words of that rule are, "that the bail shall be at liberty to render their principal at any time within the space of fourteen days next after the service of the process upon them, but not at any later period." It is quite clear, on the language of this rule, that the right to render the defendant was taken away after the expiration of the fourteen days next subsequent to the service of the process. Mr. Busby admits that the right to render is gone, but that the discretion of the Court may be exercised. But on consideration, I am of opinion that the exercise of the discretion of the Court is taken away by the language of the rule; and that I ought to adhere to that language. The present rule must, therefore be discharged.

Rule discharged.—*Bird v. Atkins & Tucknam, Bail of Atkins, junr.* M. T. 1839. Q. B.P.C.

#### THE EDITOR'S LETTER BOX.

One of the candidates who was not successful at the last examination has taken steps to appeal to the Judges. We do not feel at liberty to state any particulars whilst the matter is under consideration.

We doubt whether the letter of D. is of sufficient practical utility to justify its insertion.

"A Libeller" must excuse our expounding in a summary way the responsibility he has incurred.

We have to request that Correspondents, whether addressing themselves to the Editor or the Publisher of this Work, will pre-pay the postage of their letters or the carriage of parcels.

The letters of F. W. D.; "One, &c."; G. E., A. Z., and H., have been received.

# The Legal Observer.

SATURDAY, DECEMBER 21, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE NEW EDITION OF SIR EDWARD SUGDEN'S VENDORS AND PURCHASERS.

We have here the tenth edition of Sir Edward Sugden's Treatise on the Law of Vendors and Purchasers, which has now grown from one into three volumes of respectable size. The first edition, which we now have before us, was not quite so large as the thickest of the present three; but *vires acquirit eundo*, it got larger and larger with each succeeding edition: on the ninth edition it expanded into two volumes, and we are now happy to see the number increased to three. A more useful practical work is not to be found on the shelves of the law library; and we hold that its learned author deserves the thanks of the profession for the care and labour bestowed on it. It is too much the custom for lawyers, on promotion to the bench, to forget their obligations to the more humble ranks from which they sprung; they soon consider themselves of a different order; they are quite satisfied that they know enough already; the calls of society are attended to with a too ready alacrity; they thus lose their working habits, and in many cases deteriorate instead of improve. It thus happens that we hardly know an instance of a legal work issuing in this country from the bench. It is not always that a new edition is edited by its author, when a judge, although a successful work; and even where this has been done, he has generally contented himself with posting up some of the recent cases, and putting a new title page. How valuable, for instance, would an edition of “*Mitford on Equity Pleading*” have been, “enlarged and improved” by Lord Redesdale. Sir Edward

Sugden has not followed the bad example thus set him by his noble and learned predecessors. He has taken advantage of the comparative leisure which he now enjoys to go carefully over his former work—to reconsider all his positions—to see what has been done in the interval by others—to examine all the reported cases on the subject—to remould his materials—to add what he thought deficient—to enlarge the old ground, and to complete his original design: he has thus produced a work which will prove of the greatest use to the student, the practitioner, and to the profession at large. In doing this we may also be permitted to say, that he has rendered this further service to the country; that he has been keeping himself in training for judicial employment; and should he accept it at any future time, he will come to the discharge of his duties with his mind well informed on the exact state of the law, instead of bringing to it, as is too often the case under similar circumstances, habits enfeebled, if not by indolence, at any rate by a too great attention to extraneous matters.

With this general commendation we might, perhaps, dismiss the subject, as the work will, no doubt, soon be in the hands of most of our readers; but we think it may still be useful to extract from the additions contained in the present edition, some of Sir Edward's opinions on various matters of much practical importance; and here we have indeed a wide range to choose from, as few branches of the law are so generally interesting as the one of which he treats. We shall, however, endeavour to make a selection.

We may first extract what is said as to the right to appoint a bidder at auctions. The authorities against this practice are

thus adverted to. After stating that it was ruled by many cases that a bidder may be appointed, the author goes on thus:—

"But Lord Tenterden again opened the question at *nisi prius*, and expressed extra-judicially the strong inclination of his opinion, that if a person be employed with a view to save the auction duty, the sale is void, unless it be announced that there is a person bidding for the owner; the act itself is fraudulent. *Wheller v. Collier*, 1 Campb. Ca. 123. The statute was made for a different purpose, with a view to the duty only, and could not be made to sanction what was in itself fraudulent. And in a late case C. B. *Alexander* treated it as clear that the employment of a puffer vitiated the sale. *Rex v. Marsh*, 3 You. & Jer. 331. But it was not necessary to decide that point. And in *Crowder v. Austin*, 3 Bing. 368 (a horse cause), after a *bond fide* bidding of 12*l.*, the owner's servant made repeated biddings up to 23*l.* That appears to have been a mere fraud, but the Court is reported to have been inclined to adhere to Lord Mansfield's opinion in *Baxwell v. Christie*, Cowp. 395, (in which a *private* bidding on behalf of the vendor was held to render the sale fraudulent). The authorities, however, preponderate in favour of the validity of a person privately bidding, and the practice is universally adopted, and ought not to be lightly disturbed. It would require a decision of the House of Lords to over-rule the decisions; and it would be better to leave them undisturbed, restricted as the power now is."

Vol. I, p. 32.

We shall next take the learned author's opinion as to one of the decisions in the well-known case of *Small v. Attwood*. The main point in that case is of no great importance in a legal point of view; but the point to which we wish to refer—the power of a purchaser on a sale being set aside to follow the purchase-money,—is of great interest.

"In *Small v. Attwood*, You. 407, the purchase was rescinded by decree; 200,000*l.* had been paid long before the bill was filed, and possession had been given to the purchasers of the estate, with which they had acted as owners. They had long had possession, which they still retained, and claimed a lien upon the estate for the portion of the purchase-money paid. After the decree they filed a supplemental bill, stating the payment of the 200,000*l.*, and tracing its investment in stock, and the transfer of the stock to a third person without consideration, as it was alleged, and praying that they might, without prejudice to their lien on the estate, be decreed to be entitled to the specific stock; and Lord Lyndhurst, C. B., so decided, and accordingly granted an injunction. This is the only case in which equity followed the purchase-money, and ordered it to be specifically restored. There was an appeal against the order to the House of Lords, which it became unnecessary

to prosecute, as the decree in the original suit was reversed, on the ground that no fraud was practised by the seller. But the decree could hardly have been maintained. It was a considerable argument against the relief, that it had never been administered, and the inconvenience is obvious. In the case of a mere naked fraud, which altogether vitiates a contract both at law and in equity, there is not much difficulty in attaching the money, if it can be traced, as it never of right belonged to the seller. But in a case like *Small and Attwood*, the relief, although granted, and upon the ground of a fraudulent concealment, proceeds rather upon equitable rules than upon absolute legal nullity. Much arrangement is required to do justice between the parties in such a case, and the following of the money does not seem to be justified by the practice of the Court, nor can it perhaps be supported upon principle. In the case in question the purchaser had possession of the seller's estate, and had had that possession for a long time, and dealt with it as owner, and continued to retain it, and insisted upon his right to do so, and to enjoy it as owner, subject ultimately to account, until the accounts were finally settled. By the injunction he obtained the security of the return of his money, as well as retained his lien on the estate for it, and possession of the estate itself. It had never before occurred to any one that such relief could be obtained. If the case had remained undisturbed, it would have introduced a practice of attempting in all such cases to follow the money, and for that purpose of introducing charges and interrogatories into bills, which would tend to great prolixity, and expose every dealing and transaction of life of a defendant, between the receipt of the money and the time of answering." Vol. I, pp. 400, 401.

We shall next extract Sir Edward's opinion as to the best mode of examining an abstract. The question is, whether it should be all perused, so as to have a general notion of its contents, and then gone over a second time more carefully; or whether it be better to examine every part—step by step—with the greatest care in the first instance.

"1. In regard to the best mode of perusing an abstract by counsel, opinions differ, and I will not presume to decide. 1 Prest. Abs. 208, vol. 3, p. 59, 191, 201. But I will simply state what always appeared to me the best mode. 2. In the first place, the perusal should, if the length of the abstract will permit of it, be finished at one sitting, although any difficult point of law, the whole bearing of which is ascertained, may properly be reserved for further and separate consideration. 3. It is not useful to make many notes, for they often distract the attention. In one instance, a counsel, in perusing an abstract, actually inserted a note in the margin opposite to a defect with a serious defect, stating it to be what it ought to have been, and so the objection was

missed. His mind was engaged in making the note, and as he knew how the instrument ought to have been framed, he inserted what was not contained in the abstract—a fatal error, but one not unlikely to occur in a moment of absence. 4. Still a man should not incumber himself with unnecessary details. He may save himself much unnecessary labour by a little method. He should have a book in which he should write his opinion, and there should be a margin. He should write his opinion as he proceeds, reserving, if necessary, any important point for subsequent consideration. In the margin, he should note every term of years created, and every assignment of it; thus 1000 years, fol. 6, fol. 18, fol. 30. Nothing more is requisite where there is a regular deduction, and he can at once, when he comes to deal with the terms, refer to the title to them separately. Where there is a long deduction of a legal estate of inheritance, he may pursue the same method. If the title be complicated, he may leave a blank page in his book for references to the abstract, and queries to be considered. With some such exceptions he will find it the best and surest method of arriving at a just conclusion, to trust to his view of the title on the face of the abstract itself, without incumbering himself with or relying upon notes. 5. It may sometimes be useful to glance the eye over the abstract in the first place, in order to obtain a general view of the title, and experience will rapidly point out when a subsequent part of the abstract may be looked into advantageously before its proper turn; but, speaking generally, an abstract should be perused but once, and that once effectually. The party should never pass on until he thoroughly comprehends what he has already read; the advancing in a difficult title, in order to comprehend what you have passed and do not understand, often leads to insurmountable difficulties. 6. It is the duty of counsel to see that the parcels are correct in the several instruments, and this particularly should be followed up, step by step, when the description can often be detected and reconciled, whilst upon a general view of them it may be deemed impossible to connect them. 7. In perusing an abstract, it should not be taken for granted that the dates are chronologically arranged, but the fact should be ascertained, although this will not, as to new titles, often be important now that a will is allowed to operate on after-acquired property." Vol. 2, pp. 68—69.

We must conclude our extracts by the following valuable remarks as to the length of the title which may now be called for.

"In an opinion, or rather argument, written by one of the Real Property Commissioners since the act passed, with a view to be published, in order to establish a right still to a sixty years' title. (Mr. Brodie's opinion, *Hayes's Introd. to Conveyancing*, 230; and see *Ibid.* 193; and see the opinion in *Purvis v. Rayer*, post, 147.) It is observed, that posses-

sion adverse to a tenant for life will not run on against a remainder-man, or reversioner, so that although a tenant for life may be barred by an adverse possession of twenty years, it would, except in the case specified in the 20th section, require another period of adverse possession, commencing from the death of the tenant for life, to bar a remainder-man or reversioner. It is a mistake therefore, it is said, and at present a very prevalent one, amongst professional gentlemen who have not duly considered the subject, to suppose, that in consequence of the new Statute of Limitations, a purchaser will not be warranted in requiring the abstract to go so far back as under the old system. He had known an instance of a person being tenant for life for more than eighty years. Such a person might have been dispossessed at the time when his right first accrued; an adverse possession against him during the whole period of his life, would not have made a good title against the remainder-man or reversioner under the old law, nor will it do so under the new law. It is a common notion, that the present length of abstracts is with reference to the limitation of sixty years. This, it is said, is quite a mistake, it is *with reference to the duration of human life*, and so long as the law will not allow a remainder-man, expectant on an estate for life, to be barred by a possession adverse to the tenant for life, a purchaser will be entitled to require a title to be shown for the same period as heretofore under the old law. Now it cannot be admitted, that the sixty years was a period adopted with reference to the duration of human life; nor would that rule effect the alleged object in many cases, for example:—in the very case stated and reasoned upon in the above argument, the term of sixty years was, no doubt, adopted strictly with reference to the time allowed for a real action; and although it did not provide against all claimants, some of whose rights would not have been barred by the old statutes within that period; yet as a purchaser, in the absence of any trace of a claim, was forced to be satisfied with a moral certainty of a good title, and as the term of sixty years was of sufficient duration to meet any probable outstanding claim depending upon the duration of even a long life; that time was considered sufficient as well to give to a purchaser the benefit of the Statute of Limitations, as to protect him against any unknown claimants, who, after all, might not be barred by the statutes. Now the time within which claims in general can be made, is reduced from sixty to forty years, and the question is, whether the abstract is to be reduced in like manner. If we suppose that a seller has only a forty years' title, but that there have been repeated sales and mortgages, and there is no reason to believe that the title took its root from a tenant for life, or from a person who claimed under one, it would seem to be clear that the purchaser would be compelled to accept the title, although before the late statute the title would have been unmarketable. But if there is any reasonable ground for suspicion on this head, equity would

not force the title upon a purchaser. The danger of a title being disturbed at the end of forty years, in consequence of the sale of the fee by a tenant for life before that period, and which has remained unknown during that time, is not very great. For where a person claiming under a tenant for life begins to act as owner of the inheritance, the attention of the remainder-man is quickly aroused, and the infirmity of the title made generally known. Where the estate is settled upon marriage, the majority of a son soon leads to a discovery of the father's fraud. In the general run of cases, however, the vendor will be in the possession of documents spreading over sixty years; and then the question arises.—Is the seller bound to abstract them? A seller ought not to stickle over-much upon this point, where the prior title would not lead to much expense; but if a clear title is shewn for forty years, without any thing upon the face of it to lead to an inference that it is derived under a tenant for life, I should apprehend that the purchaser would be compelled to accept it, but he would be entitled, if he pleased, to look at the earlier deeds, although he could not require an abstract of them, in order to see that the title was not derived under a tenant for life. Sixty years would not, in many cases, meet the danger proposed to be guarded against, and it seems difficult, therefore, now to continue that period as an arbitrary rule, when the object for which it was originally introduced will be effected by a forty years' title. Still, even sixty years may not be sufficiently far to carry the title back; but it seems too much now to say, that every man must produce at least a sixty years' title, because there may have been during all that period, an adverse possession against a tenant for life only. A title commencing with an infirm foundation can generally be detected from something appearing on the face of it. It is not probable that the Courts will be called upon to lay down a general rule upon this subject; but in practice, a convenient rule will, no doubt, be adopted, and this, taking a middle course, will perhaps be to furnish a fifty years title in ordinary cases; there will be but few titles disturbed under a clear title for half a century, where the property has undergone the usual transfers upon sales and mortgages, and the possession has gone along with the title. But where the seller is in possession of earlier documents, clearly he could not withhold them, proving his title by possession, grants of leases, and the like, and then commence with deeds or wills within forty years; the title should always commence with a document, if the seller have one, and a purchaser can insist upon it. In regard to copyholds, the root of the title would be good at forty years back, for there can seldom be any difficulty in ascertaining whether a life estate is outstanding in copyholds, or whether the alleged inheritance is held under a tenant for life; but rarely any difficulty arises on this head, for either the same settlements include the copyhold as well as the freehold, where they are sold together,

so that the title is a common one, although as to the copyholds supported by the copies of court roll, or if a copyhold has been held by itself, the documents of title are so short that the abstract is generally a small one, and no objection is made by the seller to beginning with a date sufficiently early to satisfy a purchaser."—Vol. II. p. 135, 139. See further as to this point, *ante*, p. 49.

We might make many more extracts as useful and interesting as those which we have selected appear to us to be, but we have already exceeded our usual limits. It will be seen that the author has not thought it beneath him to enter into the most minute particulars, where these would be useful or serviceable to the student or practitioner. We observe also, that he frequently refers to the reports of the Real Property Commissioners, as authorities, commenting however on their opinions, when he considers them incorrect; this is as it should be. We have always thought that their reports, especially in the construction of the late acts founded on them, are of great value. Indeed it is to be remembered, that the whole body of these reports emanate from some of the most learned and eminent men in the profession; and if they had been published as treatises, would immediately have become standard text books. They have, if rightly considered, at least as much authority as any treatise can have, being the reports of the Law Commissioners, and containing the opinions of more than one. Sir Edward Sugden has given them their proper station, and we have no doubt that his example will be generally followed.

### THE ART OF RISING.

"*The art of rising.*" said Mr. Horatio Luckless, (the unhappy fate of whose mutton chops we have already commemorated,) — "*the art of rising!* I wish I had it, but alas! I do not at present see my way clear. Here I lie, and for the life of me I cannot get up; Pump Court is never very bright, and we have had a succession of mornings which its oldest inhabitants never remembered. As Dr. Johnson says, "I shall die convinced that the weather is uncertain." It must, I fear, be getting late, but I cannot tell whether my laundress has been here yet. I hear nothing but the clank of those disagreeable pattens, which the washer-women will wear, in spite of the request of the benchers to take them off when they walk through the Inn; and here I lie, remote from all the world, with not one soul to care whether I sleep out the whole of the

day or no. I wish some one would make me get up, I would go through a good deal: I wish to be thoroughly roused. I have been all but out of bed several times, but have only ended by drawing the clothes tighter round me. I wish I had more resolution, it is certainly a great deficiency in my character. I have many good points, but I cannot get up in the morning. I make vows in vain every night; I go to bed early on purpose; this I am able to accomplish, but I cannot get up a bit the sooner. See that window now! see that horrid fog looking in at me! Could any one even imagine a morning like this? Nothing can be worse except to-morrow morning. Yet I have heard that a man can accustom himself to get up at four if he tries, and here I am snug at half-past nine. Yet, if I had any inducement to rise, I think I might be able. If I had any thing to work at, then how willingly I would stir; but as it is, get up I cannot,—I have not "the art of rising."—At this moment, something with a heavy sound, was dropped through the valve of the outer door, and fell into the passage. This might not have attracted any observation from Mr. Luckless, but it was accompanied with a clink, which even to his unaccustomed organ conveyed a sound which nature has contrived to be one of the most pleasing to the human ear. To throw back the bed-clothes, to seize his trowsers, to put them on, to rush to the passage, was, in the language of the most fashionable novels, "the work of a moment." And what did Mr. Luckless see? Could it be! If it was not the thing itself, it was certainly very like it. It had the exact shape of a *brief*. He turned it on its face; it was a *brief*! and thus was it endorsed, "In the Common Pleas, *Wolf v. Lamb*. Brief for the defendant. Mr. Horatio Luckless. Two guas. With you, Mr. Serjeant Talfourd.—Jenkins and Snagg," and on a *slip of paper* which accompanied it there were these words, "This cause stands No. 4, on the list for to-day." And where were the two guineas? Was he deceived in the sound of money? No, they were neatly wrapped up in a piece of white paper, and they lay on the floor. How beautiful they looked! how superior to any other sovereigns the gold seemed! and how much more lovely than any other silver the two shillings looked! They were in fact well worth half a crown each, and he wouldn't have parted with them on any account for that sum. How charming her Majesty's profile looked on them as he turned them over! This was sacred gold; it was the first he ever had re-

ceived; it must be set apart and handed down to his children as an heir-loom, for children he might now think of. Jenkins and Snagg! How many soft emotions were raised by the former name. It might not be a very musical one, but it was English,—Saxon to the back bone. If the respectable house of Jenkins and Snagg took him by the hand, his fortune was made. All this did he ejaculate in his shirt and nether habiliments, when suddenly he thought of the mysterious slip of paper "this cause stands No. 4 in the list to-day." The deuce it did! and he had not read a word of it. What was to be done? Now he took the brief up, and read a little of it: next he put on a boot. Then he read again the interesting indorsement, in which his own name appeared so conspicuously; then he began to shave. All this took up some time, and his anxiety rather retarded than forwarded his operations. In less than an hour, however, he was dressed and ready, but he had had no breakfast. Appetite indeed, he felt but little: he was too much pleased, too nervous to eat. Taking up his valued brief in one hand, and a crust of bread in the other, he told his little boy, who had by this time arrived, with somewhat of an important air, that he was going to the Common Pleas, and thither did he bend his path with hasty steps. He shouldered his way through the groups of witnesses, clerks, and idlers, generally found loitering about the doors of the court, slipped on his wig and gown, and pushed into court with a look which seemed to say that the affairs of this world rested pretty much on his shoulders. He first ran to the paper of causes, and found, with dismay, that the cause of *Wolf v. Lamb* was actually on, the jury were in truth in the act of delivering their verdict. He was just in time to hear the foreman say, "we find for the plaintiff, damages 160!," and to encounter in the well of the court the displeased face of his client, Mr. Jenkins. He had no opportunity to speak with his leader, who was in the next cause which was called on. He found that of the three causes which had stood before that of *Wolf v. Lamb*, the first had been undefended; in the second the record had been withdrawn, and the third was submitted to arbitration. Mr. Jenkins came round to him for his brief which he had scarcely been able to read, and on receiving it, said to him with gravity, but with some good nature, "Allow me, Mr. Luckless, as an old member of the profession, to remind you, that the only way to get on at the bar, is to learn the *art of rising*."

**CHANGES IN THE LAW**  
**IN THE LAST SESSION OF PARLIAMENT.**  
**No. XVIII.**

**HIGHWAYS AND RAILROADS.**

2 & 3 Vict., c. 54.

*An act to amend an act of the fifth and sixth years of the reign of his late Majesty King William the Fourth relating to highways.*

[17th August 1839.]

1.—*5 & 6 W. 4, c. 50. Proprietors of railroads to maintain gates where any railroad crosses the highway, &c. Penalty 5l. for each day's neglect.*—Whereas by an act passed in the session of parliament holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "an Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," it is amongst other things by the said act enacted, that whenever a railroad shall cross any highway for carts or carriages, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to attend to the opening and shutting of such gates, so that the persons, carts, or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad, and any complaint for any neglect in respect of the said gates shall be made within one month after the said neglect to one justice, who may summon the party so complained against to appear before the justices at their next special sessions for the highways, who shall hear and decide upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds: and whereas it is also by the said act further enacted, that nothing in this act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchyards, or pavements which now are or may hereafter be paved, repaired, or cleansed, broken up or diverted, under or by virtue of the provisions of any local or personal act or acts of parliament: and whereas it is deemed expedient to amend the said provisions in the said act, and to extend the same to turnpike roads in England: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, that wherever a railroad crosses or shall hereafter cross any turnpike road or any highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid at each of the said crossings, and shall employ good and proper persons to open and

shut such gates, so that the persons, carts, or carriages passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or if in Scotland to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty session or court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pouuds, together with such costs as to the justices or sheriff depute aforesaid before whom the conviction shall take place shall seem fit.

2. *How penalties shall be recovered and applied.*—And be it further enacted, that the penalties by this act imposed, and the costs to be allowed and ordered by the authority of this act, shall in England be recovered and applied in the same manner as any penalties and costs under the said act, and in Scotland shall be recovered and applied to the maintenance of the statute labour roads within the district where the offence is committed.

3. *Commencement of act.*—And be it further enacted, that this act shall commence and take effect from and after the thirtieth day of September one thousand eight hundred and thirty-nine.

**NOTICES OF NEW BOOKS.**

*The Magistrate's Pocket Companion; containing a Practical Exposition of the Duties of a Justice of the Peace out of Quarter Sessions, alphabetically arranged.* By William Eagle, of the Middle Temple, Esq., Barrister at Law. London: Shaw & Sons. 1839.

This work is intended to exhibit, in a compendious form, and as a *Hand-book*, if not a "Pocket Companion," the Law and Practice of a Justice of the Peace acting out of Quarter Sessions, and to remedy in some degree, the inconvenience of seeking information from that voluminous work, "Burn's Justice."

Mr. Eagle's book was published after the close of the last session of parliament, and therefore includes the law to which it relates in its present state. Conciseness being a main object of the work, it was to be expected that a large part of the old law would be stated with the utmost brevity; but the important alterations of recent date have been digested somewhat fully.

The known learning and care of Mr. Eagle have been bestowed on his present work, which we think will be found useful, not only to the magistrates in general, but to those who are professionally engaged in the various matters submitted to their consideration.

As examples of the manner in which the work has been composed, we select the subjects of *Evidence, Examination, Confession, and Bail.*

#### EVIDENCE.

"In all proceedings before justices, except where otherwise directed by particular statutes, the general rules and principles of evidence must be strictly observed. In exercising a summary jurisdiction, a justice, who, in such case, is substituted for a jury, must decide upon the evidence in the same manner as if he were sitting upon a jury.

"One witness is sufficient to convict an offender, unless a greater number be required by the statute.

"Justices by virtue of their commission may compel the attendance of witnesses on a summary trial of an offence amounting to a felony or a misdemeanor.

"On an examination before trial, if a material witness against the accused will not attend voluntarily, a summons should be issued against him directed to a constable and personally served; and the party summoned may be indicted for disobedience.

"And it seems that, upon the reasonable request of the accused, the justice has the same power of compelling the attendance of material witnesses on his behalf.

"To compel the attendance of witnesses at trials, in criminal cases, the justices who take the examination of the person accused, and the information of the witnesses, may at that time, or any time afterwards before the trial, bind over the witnesses to appear at such trial; and if they refuse to be bound over, may commit them for contempt. And, in such cases, if the witness do not appear, his recognizance will be forfeited.

"As to the attendance of witnesses on summary proceedings for penalties before justices:

"When a witness appears, he must be regularly sworn, unless he is incompetent. The following persons are incapable of giving evidence. 1. Insane persons, idiots, and lunatics; but persons subject to temporary insanity may be witnesses during their lucid intervals; and children; but the evidence of children, who understand the nature and obligation of an oath, is admissible. 2. Atheists, and such infidels as profess no religion that can bind their consciences; but all persons who believe in the existence of a God and a future state, are capable of being witnesses. Jews are sworn on the Pentateuch; Mahometans on the Koran; Hindoos and others according to the forms of their religions. 4. Persons of infamous character, that is, who have been convicted of treason, felony, perjury,

and subornation of perjury, or of any crime deemed infamous in law.

"Informers and other persons entitled to any part of the penalty on a conviction, or indirectly benefited by its application, are incompetent, unless expressly declared to be competent by the statute under which the conviction takes place.

"Husband and wife cannot give evidence for or against each other.

"An accomplice is a competent witness; but his evidence should be received with caution.

#### EXAMINATION.

"By 7 Geo. 4, c. 64, s. 2, the two justices before they admit to bail, and the justice or justices before they commit any person for felony shall take his examination, and the *information upon oath* of those who knew the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material into writing; and may bind the witnesses by recognizance to appear at the trial to prosecute or give evidence; and shall subscribe all such examinations, informations, bailments and recognizances and send them to the proper officer of the Court where the prisoner is to be tried. 2 B. 116.

"Sect. 2. The same provisions as to examination, information, &c. in charges of misdemeanor.

"Sect. 4. Justices offending against the above provisions shall be fined by the Court.

"As to the mode of examination, and taking down the information of witnesses, see "*Conviction.*" The rules there laid down are applicable to examinations for trial.

"The examination, having been put into writing, is read over to the witness, and he is required, and ought to sign it; but he cannot be compelled to do so; nor is his signature essential to the validity of the depositions.

"The party accused is to be allowed to speak voluntarily, and freely, and not pressed to answer, examined, or questioned like an ordinary witness.

"His examination having been put into writing should be read over to him, and tendered to him for signature, which, however, is not absolutely necessary, and afterwards subscribed by the justice.

"It is very material to bear in mind that the examination of the accused party should be taken without oath.

The justice must also return any confession of the prisoner.

"A *free and voluntary* confession, made by a prisoner, whether made before or after he is apprehended, whether made on a general examination, or after commitment, whether reduced into writing or not; in short, any voluntary confession, made by a prisoner at any time or place, is strong evidence against him; and if satisfactorily proved, sufficient to convict, without any corroborating circumstance, but if it be drawn from him by improper influence, threats, or promises, it cannot be received in evidence. 1 Burn, 810.

"If a confession be obtained by undue

means, nothing that the prisoner afterwards says, under the influence of having made that confession, can be received. 1 B. 814.

"If by some reasonable occasion the justice cannot complete the examination, he may by word of mouth command the constable or any other person to detain the prisoner in custody till the next day, and then bring him before the justice for further examination, without any warrant in writing. But where the detainer is for a longer time, there should be a warrant in writing.

"There is no precise limitation as to the time for which a prisoner may be committed for re-examination; it must be reasonable; the usual practice is said to be, to commit from three days to three weeks, by a commitment in writing.

"If a person be charged with suspicion only of felony, and there be no felony proved, or if the facts charged be not a felony in law; the justice may discharge him as to felony.

"But if there be an express charge of felony on oath, though the guilt of the prisoner appear doubtful, the justice cannot wholly discharge him, but must bail or commit him. And though evidence is usually received for the accused and certified by the justice, yet unless it clearly appears that the charge is malicious as well as groundless, it is not usual to discharge him.

"The justice, as before observed, is empowered to bind parties to prosecute and give evidence; but infants and married women, who cannot bind themselves, must procure others to be bound for them.

"A justice may commit a prosecutor or witness refusing to enter into such recognizance. But he ought not to commit a witness willing to enter into such a recognizance, merely because he is unable to find a surety to join him; nor ought the justice to require such surety; nothing more ought to be required than the recognizance of the party himself at the peril of commitment.

"By 6 & 7 W. 4, c. 114, s. 3, persons bailed or committed are to have copies of depositions from persons having the lawful custody thereof on payment of not exceeding three half pence for every folio of ninety words.

#### BAIL.

"By 3 Ewd. 1, c. 15, justices have no power to bail in high treason. 1 B. 315.

"By 5 & 6 Will. 4, c. 33, s. 3, two justices (of whom one shall have signed the warrant) may bail in a case of felony, according to the provisions of 7 Geo. 4, c. 64, in such sum or sums, or with such surety or sureties as they shall think fit, although the offender may have confessed the charge, or the justices may think that the circumstances raise a strong presumption of guilt. 1 B. 317.

"By 7 Geo. 4, c. 64, s. 2, justices, before they bail any person arrested for felony, shall take his examination and the information in writing, and certify the bailment in writing. Ib.

"On a charge of misdemeanor, one justice may take bail, except for breach of prison, or where it is prohibited by some special statute.

"The sureties ought to be of sufficient ability to answer the sum in which they are bound. The amount of the sum and the sufficiency of the sureties are left in a great degree to the discretion of the justices, who are usually guided in this respect by the station and property of the accused. In the case of a labourer or other common person, he is generally bound in 50/-, with two sureties in 25/- each; but, as it will be seen, the bail must not be excessive. The justices may examine the bail on oath as to sufficiency.

"Every housekeeper of adequate ability may be bail. The defendant's attorney may be bail for him. But persons convicted of an infamous crime, and married women, cannot be admitted.

"It is said that justices may take a deposit of money as a substitute for bail. 1 B. 321.

"The requiring of excessive bail is prohibited by stat. 1 Will. & M. sess. 2, c. 2; and if the sum required be so large as to amount to a denial of bail, the justices or justice will be liable to an action and an indictment. 1 B. 322.

"A party who is imprisoned for want of bail may be released, on finding sureties, at any time before conviction; in which case the justice issues his warrant, called a liberate, to the gaoler. 1 B. 321.

"The prisoner is sometimes sent to a private place of confinement for a short time, and particularly where notice of bail is required, to afford him an opportunity of procuring it.

"In general, no notice of bail is requisite; but justices may order twenty-four or forty-eight hours' notice to be given to the prosecutor. 1 B. 321.

"A justice refusing bail when it ought to be taken, is liable to an action and indictment. 1 B. 322. The bail must be tendered by the prisoner, or the justice is not required to grant it. Ib.

"If any justice take bail where he ought not, or knowingly and willingly take insufficient bail, and the party do not appear, he is punishable by the judges of assize, and may be struck out of the commission, 1 B. 323.

"The sureties may re-seize the party, if they fear his escape, and bring him before the justice for commitment. /a.

## APPEAL TO THE JUDGES FROM THE EXAMINERS' DECISION.

By the 3d section of the Rule of Hilary Term 1836, in case any person shall be dissatisfied with the refusal of the examiners to grant such certificate [of fitness and capacity], he shall be at liberty to apply for admission by petition in writing to the Judges; which application shall be heard in Serjeants' Inn Hall by not less than three of the Judges.

One of the unsuccessful candidates at the Michaelmas Term examination has availed himself of this permission. His petition, after stating part of the Rule of Court relating to the examination, and the applicant's due service under his articles, proceeded to set forth in substance as follows :

That the petitioner, having complied with the rules made for the government and direction of articled clerks seeking admission to practise as attorneys at law, on or about the 19th [18th] day of November, instant, offered himself for examination : whereupon, he was examined by the said examiners as to his proficiency in the several branches of law and equity :

That the petitioner, subsequently to his said examination, received a letter from Mr. Maughan, the Secretary to the Incorporated Law Society, informing the petitioner that he had been rejected by the examiners, [or rather the examiners, deeming his answers insufficient, could not sign his certificate of fitness to be admitted :]

That the petitioner was ignorant of the grounds of such rejection, and felt assured, that if their Lordships would confer upon him the benefit of such appeal as is given by the provisions of the rules and orders, the petitioner would be fully able and competent, by his answering, to prove his qualification to practise as an attorney :

That the petitioner, from the effects of severe illness, and great nervous timidity during the time of his examination, underwent such examination under very unfavourable circumstances ; but he is now ready and anxious to submit himself to such examination as to their lordships should seem meet :

That the petitioner's diligence and good conduct were so appreciated by his late master, as to induce him to procure for the petitioner a valuable professional employment upon the petitioner's obtaining his certificate from the examiners, which appointment he will be deprived of, in the event of his certificate being withheld until next Easter Term :

That the petitioner, entertaining the greatest respect for the Examiners, nevertheless craved leave to avail himself of his privilege of appeal to their Lordships against the decision of the Court of Examiners.

In consequence of this petition, the Judges appointed a hearing in Serjeants' Inn Hall on Tuesday last the 17th instant, and at the time appointed, Mr. Justice Littledale, Mr. Justice Patteson, Mr. Baron Alderson, and Mr. Justice Coleridge took their seats on the bench.

Mr. Justice *Littledale* said the Judges had considered the examination of the petitioner, and were all of opinion that the examiners had come to a correct conclusion ; but, that as the party had been unwell at

the time of the examination, if the examiners from kindness to him, thought proper to examine him next term, they (the Judges) would recommend the Court to dispense with the term's notice. But it must be understood that this was merely from a consideration of the peculiar circumstances of the case, and should not be drawn into a precedent in favour of persons who did not sufficiently prepare themselves for the examination. The Judges wished it to be known also that they considered this application as an appeal upon the examination which had taken place, and that they would not examine the party themselves.

The applicant entreated the Judges to allow him to be examined before next term, on account of the loss he would sustain by the delay, and the injury to his health ; stating that his object was not so much to get admitted next term, as to pass his examination.

The Judges said if the examiners would out of kindness take another examination of him at any time convenient to them during the vacation, the party might be admitted the first day of term.

The secretary of the examiners suggested to their Lordships to consider whether the examiners had any power to proceed on the examination except during the last ten days of term according to the Rule of Court.

Mr. Justice *Patteson* and Mr. Baron *Alderson* were understood to say, that the examiners might proceed during the vacation, and certify their opinion to the Court ; the Judges, however, would not press the further examination upon them, but leave it entirely to their discretion.

We are not aware what precise arrangement was finally settled, but understand that the Examiners will hold an early meeting on the subject.

#### PRE-PAYMENT OF PROFESSIONAL LETTERS IN THE LONDON DISTRICT.

*To the Editor of the Legal Observer.*

Sir,

EVERYBODY is looking forward to the Penny Postage, and compulsory pre-payment ; but as the present system will probably be in force some months, I think you would render a service to solicitors by giving your opinion as to when they ought to pre-pay the postage.—Perhaps, as we must shortly, we might as well at once pre-pay *all* letters ; at least, I think all letters the postage of which would be more for non-pre-payment, that is, general post letters above an ounce weight, and all letters by the twopenny and threepenny posts exceeding

half an ounce weight; reserving the liberty of sending unpaid answers to unpaid letters. For want of some understanding on the subject, good-natured solicitors will be paying the postage of their own and many of their correspondents' letters.

F. W. D.

### SELECTIONS FROM CORRESPONDENCE.

#### COMMON PLEAS JUDGMENTS.

*To the Editor of the Legal Observer.*

Sir,

I have taken the liberty of addressing you on the following subject, and hope that you will allow it a space in your valuable journal, as it is a matter of great importance to the larger portion of London solicitors.

For a length of time it has been the custom of the officers in the Common Pleas Office to allow the judgments for the last three Terms to continue in a mixed state, so that in making a search for judgments against a single individual, the profession are compelled to search through the whole of the judgments signed during those terms, which occupies a full hour, whereas if they were indexed in alphabetical order, every day (as they are in the Queen's Bench and Exchequer) the search would not occupy, at the furthest, ten minutes. Surely such a practice as this ought no longer to be allowed to exist, to the great annoyance of the members of the legal profession, whose time is far too precious to waste in so useless a manner, and the remedy so easy to be accomplished.

I have made the foregoing statement, which may be relied upon as being correct, in the hope that it will meet the observation of those whose duty it is to see that the judgments are kept properly indexed.

G. E.

#### FEE ON EXTRACTS OF JUDGMENTS IN Q. B.

Sir,

In searching for judgments in the Queen's Bench, a charge of sixpence is made by the clerk in the office for every extract of judgment taken by the solicitor beyond the usual fee of 2s. 6d. for the search. Is this a legal charge? Nothing is ever demanded in the Common Pleas or Exchequer for these extracts. Although at first sight this question may appear frivolous, it is, notwithstanding, one of importance in long searches, and it frequently happens that a great many of the same name are found in the index, which afterwards turn out not to be the person against whom the searches are made, and which causes a great increase in the expense.

G. E.

[We have no doubt that, so far as may be proper or practicable, these "petty ills" will be cured when made known to the proper authorities. ED.]

#### HARDSHIPS ON WITNESSES.

Sir,

The state of the law applicable to witnesses under attendance upon subpoenas, deserves some attention, from the great hardship that is daily inflicted upon individuals who are compelled to wait for days together at the different Courts of Common Law in the metropolis, and who are entirely dependent upon the liberality or mercy of the party who requires their aid. It too frequently happens that persons are subjected to vexation and annoyance through ill-feeling or caprice, and for which there is no redress. The Superior Courts and the inferior jurisdiction, do not enforce any allowance, and in consequence a needy man is frequently deprived of the means of subsistence for some time whilst he is bound under a penalty of fine or imprisonment to obey the direction of a process sued out at pleasure. It is certainly an anomaly that witnesses, who are the chief support of legal right, should be the only instruments incident to a tribunal of justice that are without remuneration for their irksome and compulsory obedience to the law.

A. Z.

### SUPERIOR COURTS.

#### Lord Chancellor's Court.

##### PRACTICE.—VENDOR AND PURCHASER.

*An incumbrancer on an estate sold under a decree, purchased it with leave of the Court, but not being able to complete his purchase, an order was made discharging him therefrom, and ordering the estate to be resold, and the deficiency of price to be made good by him : Held, that so much of the order as discharged the purchaser was bad, and that the rule should be for the future to order purchasers to complete their contracts, or that the estate be resold, and the purchasers make up the deficiency.*

This was a suit in which husband and wife were adverse parties. By a decree in the cause an estate, in which they were severally interested, was ordered to be sold. The husband being in possession of the estate, applied for and obtained leave to bid for it. He bid 11,000L. and was reported the purchaser, but he failed to complete his contract. The Vice Chancellor, upon application on the part of the wife, made an order, discharging the purchaser from his contract and ordering a re-sale of the estate, and that the said purchaser should make up any deficiency of price upon the re-sale.

Mr. Wigram and Mr. K. Parker, on behalf of the husband, the purchaser, moved to discharge so much of the said order as directed any deficiency of price in the resale to be made good by him. The order having discharged him from the purchase, on the application of the other party, he was completely released.

Mr. Richards and Mr. Turner, contra, supported the Vice Chancellor's order.

The Lord Chancellor.—The husband was let in to purchase by leave of the Court, and not

being able to complete his contract, it is ordered that he be discharged from it. So far this order is intelligible, though probably not consistent with practice; but it further orders him to be charged with any deficiency of price below the 11,000*l.* on the resale. His Lordship was not aware of any precedent for such an order, taken altogether. The Court would hold trustees and executors and others, bidding without leave of the Court, to make good all loss caused by such interference, but this purchaser did bid by permission of the Court, and he is discharged by the Court. His Lordship gave time to search for precedents, and to speak to the question again.

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**Mr. Richards** and **Mr. Turner**, on a subsequent day.—**Mr. Harding**, being a defendant to the suit, was subject to the jurisdiction of the Court. He, by his offer, prevented the profitable sale of the estate from 1835 to 1838, and he was in possession all that time. The Court, though it discharged him from the purchase, which he was not able to complete, had power to compel him to make good the loss which he had caused. Through his fault the property was not sold, and it continued wholly unproductive. Was not this purchaser justly responsible for the loss caused by the postponement of the sale in consequence of his nonperformance of his contract? The following cases were found on the point:—*Sanders v. Gray*, in which it appears, from *Reg. Lib.* December 16th, 1811, fol. 1090, that Lord *Eldon* made an order on a purchaser to complete his purchase, or that the estate should be resold, and that in the last alternative the purchaser should pay the deficiency, and the costs occasioned by his not completing his purchase, and of the resale. To the same effect was an order made by the Vice Chancellor, in *Tanner v. Redford*, *Reg. Lib.* 8th of May, 1834. In Smith's Practice, a book of considerable authority, Vol. 2, p. 205, after referring to the former of these cases, cited another, *Fournier v. Duke of Kent*, 29th of March, 1829, in which an order was made for a resale, in default of full payment of the purchase money within a certain day, and that the purchaser make up the deficiency, including interest on the purchase money, together with costs, &c.—

[The Lord Chancellor.—But you have discharged Mr. Harding, and he is not before the Court any longer as connected with the purchase. Had the order been like that made by Lord *Eldon* in 1811, viz. that he should complete his purchase, or that the estate be resold, and that he, in that alternative, should pay the deficiency, &c. it would be consistent enough.]—The Court below thought it necessary to discharge Mr. Harding from the purchase before it ordered the resale, but it did not discharge him from the liability to make good the deficiency on the resale. There would be no difficulty in modifying the order so as to hold him still liable, as in justice he ought to be, after committing this fraud on the parties, and on the order of the Court giving him leave to bid.

**Mr. Wigram** and **Mr. K. Parker**.—There was no fraud. Mr. Harding was willing, but not able, in consequence of unforeseen misfortunes, to complete the purchase. There is no appeal from that part of the order discharging him from the purchase. He might have been held to his purchase, but not by an order discharging him, and directing the estate to be resold. The cases cited from the Registrar's book were not authorities; for the orders were by consent, and the facts are not stated. Mr. Harding having himself an interest in the estate to the amount of 6000*l.*, wished to have it before a stranger, and he thought it worth the 11,000*l.*, but was not able to make up the money. It was contrary to all practice to order the estate to be resold and the party to be liable to make good the deficiency, after being discharged from the purchase on the petition of the party who now seeks to fix him with the deficiency, although he gained no benefit by the transaction.

**Mr. Richards**, in reply.—He gained the benefit of not being sent to the Fleet, to which purchasers who do not perform their contracts under similar circumstances, are liable to be committed. The Court had power to alter the form of the order and adapt it to the exigencies of the case.

The Lord Chancellor said he was anxious to lay down a rule of practice in a question that so often occurred. There were no precedents except those that were cited. He did not see any objection to the order cited as made by Lord *Eldon* in 1811, in *Sanders v. Gray*. The practice is to hold the purchaser to his purchase, and in default to order a new sale, any loss to be made up by the unwilling purchaser. But here the party pressed for a resale,—first discharging the purchaser, instead of holding him to his purchase and making the price a *lien* on the estate. Here it was sought to go against him for damages. If Mr. Wigram wished it, his Lordship would discharge the order, and hold Mr. Harding to his purchase. The parties ought not to be prejudiced by his conduct. But if a decision was pressed for on the question, his Lordship would consult with the other Judges of the Court, and lay down a rule of practice, adopting for that purpose the order in *Sanders v. Gray*.

His Lordship, on a subsequent day, said he had conferred with the Master of the Rolls and the Vice Chancellor, and they all agreed to make it a rule of practice for the future, in cases of this kind, that the purchaser, if unable or unwilling to complete his contract to purchase, should be ordered to make up the deficiency of price in the resale. In the present case, as Mr. Harding was discharged from the contract by the Vice Chancellor's order, his appeal would be dismissed without costs, if he would submit to make good the deficiency on the resale; otherwise his appeal would be dismissed with costs.

**Harding v. Harding**.—At Westminster, November 5, 8, & 21, 1839.

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## Queen's Bench.

[Before the Four Judges.]

## CORPORATION.—JAIL.—JUSTICES.

The 5 Geo. 4, c. 85, only gives to the justices of boroughs already having a jail the power of contracting with the justices of the county or of other boroughs for the maintenance of their prisoners. The 5 & 6 W. 4, c. 76, merely puts the town council in the place of such justices; and therefore where the town council of a borough to which under the latter statute a Court of Quarter Sessions had been granted, but which had no jail of its own, proposed to enter into such a contract, this Court granted a certiorari to bring up the order of the county justices under which the contract was to be made, on the ground that the two acts, taken together, gave the justices no jurisdiction to make it.

In this case a rule had been obtained for a certiorari to bring up an order of the justices of Lancashire appointing a committee of their own members, and authorising such committee to treat with the corporation of the borough of Manchester for the maintenance in Salford jail of the prisoners tried at the borough sessions of Manchester, that town not having any jail of its own in which such prisoners could be kept.

The Attorney General and Mr. Crompton shewed cause against the rule.—In the first place there was a preliminary objection to this rule. The statute, 13 Geo. 3, c. 18, s. 5, which regulated the granting of writs of certiorari, required that it should be truly proved upon oath that the party suing forth the same had given six days notice to the justices against whom such writs were to be issued. In this case there was the affidavit of service of notice on two justices by "A. B., solicitor to C. D., late," &c., but there was no affidavit whatever connecting the party who served the notice with the party at whose suit the application to the Court was made, so that the notice might have been served by one party and the rule applied for by another, yet it is absolutely necessary that that should be done. *The King v. The Justices of Kent,*<sup>b</sup> and *The King v. The Justices of Cambridgeshire.*<sup>c</sup> The second objection was to the subject of the application itself. The right to a certiorari was taken away in this case. [This second objection was not argued.] The order in question was made under the authority of the 5 Geo. 4, c. 85,<sup>d</sup> and

the 5 & 6 W. 4, c. 76, s. 114; and if so, then the right to bring it up by certiorari is taken away by section 132 of the latter statute. By the 5 Geo. 4, the justices of counties have power to enter into contracts of this kind with justices of boroughs for the maintenance of prisoners committed by the latter. That statute first provided for such an arrangement between the justices of the county and of the borough; but it did not give any power to borough corporations to treat with the justices of the county on any such matter. That defect is remedied by the 5 & 6 W. 4, c. 76, s. 114. The order now sought to be brought up could not have been made under the 5 Geo. 4, c. 85, but only under the joint operation of that statute and the 5 & 6 W. 4, by which the power of entering into these contracts was transferred from justices of boroughs to the councils of corporations. Now the latter act does not permit the contracts of the corporations to become the subjects of certiorari. The 132 section is decisive on this subject. These provisions go to shew that the Court can have no power to grant a certiorari. But supposing that the Court does possess such a power, then there are strong and decisive reasons against its being exercised in the present instance. The order has been properly made in itself, and there is authority in the corporation to enter into the contract which was the subject of the order. The other side made two objections to the order—first, on the ground that the borough of Manchester had no jail of its own, and therefore its corporation had no authority to enter into such contract with the county magistrates; and secondly, that Salford was not for that purpose a part of the county, nor the subject of the jurisdiction of the county magistrates. These objections cannot be sustained. As to the first of them, the words of the section in the 5 Geo. 4, are, "the justices of the peace of any borough." Nothing whatever is said of any borough with or without a jail. There are certainly in the section the words "or other persons having the government or ordering of a jail in any city or borough;" but these words are meant to apply to those particular cases in which particular individuals have, by prescription or

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shall be lawful for justices of the peace, or any two of them, or for other persons having the government or ordering of any jail or house of correction in any city, town, borough, &c. to contract with the justices of the peace having authority or jurisdiction in and over any jail of the county, &c. wherein or whereunto such city, town, borough, &c. is situate or adjacent, for the support and maintenance in such last mentioned jail, &c. of any prisoners committed thereto from such city, town, borough, &c."

• By which it is enacted, "that no conviction, order, warrant, or other matter made or purporting to be made by virtue of this act shall be quashed for want of form, or be removed by certiorari into any of her Majesty's Courts of Record at Westminster."

<sup>a</sup> By which it is enacted, "that no writ of certiorari shall be granted, &c. to remove any conviction, judgment, order, or other proceeding before any justice of the peace of any county, city, borough, town, &c. unless moved for within six calendar months after such order, &c. and unless it be duly proved on oath that the parties suing forth the same have given six days' notice thereof in writing to the justices, &c."

<sup>b</sup> 3 Barn. & Adol. 250.

<sup>c</sup> Id. 887.

<sup>d</sup> By sect. 1 of which it is enacted, "that it

otherwise, the right and duty to maintain a jail within certain franchises. They do not apply to boroughs in general. [Mr. Justice *Patteson*.—It seems to me that the 5 Geo. 4, meant that those who were under any liability to maintain prisoners might contract with others to take that liability off their hands, but if they have no jail to maintain, then they can have no liability, and consequently do not suffer from any burden, nor require the means to be relieved from it by having a power to contract with others.] Such may be the construction of the statute in ordinary cases; but wherever there is a grant of quarter sessions, and a borough has officers appointed to try persons charged with certain offences, and to sentence the convicted prisoners, then, whether there is a jail or not within such borough at the time, the burden of keeping the prisoners would, by necessary implication, be thrown on such borough. If the borough accept the grant of such a jurisdiction it must accept the liabilities consequent upon it, and must have the power to discharge those liabilities. It would be a strange thing to say that where there was an insufficient jail the borough might contract for the maintenance of its prisoners, but that where there was none, though it might have a court of criminal jurisdiction, it could not have a place to keep the prisoners in. Though, therefore, there was not *de facto* a prison in the town of Manchester when this contract was entered into, the necessary consequence of the grant and acceptance of the power to hold a court of quarter sessions is, that the borough must either maintain a jail within its own limits, or must be entitled to contract with the county or with another borough for the support of the prisoners. Wherever there is a court of record, there is an implied power of erecting a jail for prisoners who may be detained for debts or damages recovered in such court. It must, of course, be the same as to a court of criminal jurisdiction, and the 5 Geo. 4, and the 5 & 6 W. 4, give all the powers necessary for carrying that principle into effect.

*Mr. Creswell, Mr. Wightman, and Mr. L. Peel*, in support of the rule.—The argument on the other side amounts to this, that, by implication, the town council of a borough is to be invested with the power of building jails and taxing the borough for it. It must be recollect that the power to build or maintain jails cannot be exercised without the power of taxation. Now no such power can be created by mere implication, and it certainly is not given to this corporation of Manchester by any express enactment. It followed, therefore, that the corporation possesses no such power. As to the objection to the notice, it is clear that the notice is sufficient, and so is the service of it. The object of the notice is to enable the party against whom the application is made to come and shew cause against it. That object has been fully attained here. In *The King v. The Justices of Cambridgeshire*,<sup>1</sup> the motion was bad because it

affected to be given on the part of the person who served it and also on the part of others—a statement that was there bad both in law and fact. There is no use in the party swearing that he who served the notice is also the party making the application—he must do more—he must enter into the recognizances to prosecute the *certiorari* with effect, otherwise the writ will not issue. In *The King v. The Justices of Kent*,<sup>2</sup> there was an attempt to change the parties, which was, of course, not permitted. These cases do not apply to the present. [Mr. Justice *Patteson*.—You need not trouble yourself further on this point; for if the justices come here and shew that the applicant is not a proper person to have the writ, of course it will not issue.] Then as to the other point, that the right to the *certiorari* is taken away by the 5 & 6 W. 4, c. 76, s. 132, there is no foundation for that argument. The legislature has not granted to town councils a favour of that sort—always refused to the justices of a county—to make, without control, contracts of this nature. But, without arguing on general principles, it is sufficient to refer to the words of this particular statute to see that a claim of the sort now set up cannot be supported. The contract is a contract purporting to be made under the words of the 5 Geo. 4, c. 85. The power to make the contract, and the contract itself, are therefore created by the 5 Geo. 4, and all that the 5 & 6 W. 4, does is to point out certain persons in boroughs who, instead of the justices of boroughs, may make such contracts with the county justices. But the contracts wholly depend for their validity on the 5 Geo. 4, and consequently the orders for making them are subject to be removed by *certiorari*, in the same way as before the 5 & 6 W. 4, was passed. But this same section raises the still stronger objection, for it clearly shews that the power to make these contracts resides only in those who are justices of a borough where a jail already existed. The right to erect a jail in a place not already having one is not granted by the statute. The grant of a court of quarter sessions creates no such power. On the contrary, the want of a jail may make the grant of quarter sessions invalid. The Sovereign might by the Royal prerogative grant quarter sessions to a borough before the Municipal Corporation Act passed, but if that power has not been exercised, the grant under the 5 & 6 W. 4, of such a Court, must be made in accordance with the provisions of that statute, and such a grant does not confer a power to tax the inhabitants. That cannot be done without an act of parliament. It may therefore rather be argued, that if there is not a jail within a borough, a court of quarter sessions ought not to be established there; and that seems to have been the opinion of the legislature, even in the Municipal Corporation Act itself; for in sec. 103,<sup>3</sup> the

<sup>1</sup> *Id.* 250.

<sup>2</sup> 2 Inst. 705. Com. Dig. Imprisonment A. Bac. Abr. Imprisonment, G.

<sup>3</sup> By which it was enacted, "That the coun-

town council is required to comply with certain conditions, in order to obtain a grant of a court of quarter sessions, and one of these conditions is the setting forth the state of the jail in the borough. These words shew that the 5 & 6 W. 4 itself, assumes that where there is to be a court of quarter sessions there must have been a jail to receive the prisoners. The grant of the quarter sessions is therefore not a good grant, for it affects to be made under the 5 & 6 W. 4, and yet does not follow the provisions of that statute. This case is exactly similar to that of the borough of Sunderland in the county of Durham,<sup>k</sup> in which the conditions of the act not being complied with, the grant of the charter was held void ; and the corporation was obliged to get rid of the difficulty by procuring a fresh act of parliament. Again, who were the parties to this contract ? The 5 Geo. 4, required that they should be, if not justices, at least persons having the ordering of the jail. Here there was no jail to order. Then who are the persons to be imprisoned ? they are those who might lawfully be committed to such jail ; that is, the persons who are to be removed to Salford jail, are those who, but for the contract, would have been maintained in Manchester jail. But such prisons cannot exist, for there was no jail in Manchester, and the town council had no power of erecting one. So that first, there are here no sufficient contracting parties, and secondly, there is no sufficient object of contract. The 4 G. 4, c. 64, which is a statute in *pari materia*, in like manner presumes a jail to be in existence, and its provisions are only directed to places where such is the case. And such too is the principle of the 1 Vict., c. 78, by the 37th section of which the councils of boroughs are declared to have the same powers as justices in general or quarter sessions had, "in building, enlarging, or repairing any jail belonging to their city," under the 4 G. 4, c. 64, or the 5 G. 4, c. 85. Here, therefore, the town council has acted in a matter beyond its jurisdiction, and the case consequently falls within the rule adopted in those cases relating to highways, where, if the justices have exceeded their jurisdiction, this Court will grant a certiorari.

Mr. Justice Patteson.—It is clear, that the subject-matter of this order is under the 5 Geo. 4, c. 85, though the persons entering into the contract are those named in the 5 & 6 W. 4, c. 76 ; for the town council was not in existence at the time of the former statute. Now, the substance of the contract being under the 5 Geo. 4, is it possible for us to say that the right to a *certiorari* is taken away ? I

cil of every borough which shall be desirous that a separate court of quarter sessions of the peace shall be, or continue to be, holden in and for such borough shall signify the same by petition to his Majesty in Council, setting forth the grounds of the application, the state of the jail, and the salary they are willing to pay the recorder."

<sup>k</sup> *The King v. White*, 2 Har. & Wol. 403 ; 5 Adol. & El. 613.

think it is not. I cannot tell what may be the consequences, from the construction which we are bound to put on these statutes. If they are mischievous, I hope that some remedy will be afforded to them by the legislature, but I am bound to say, that on the construction of the 5 Geo. 4, I do not think that the legislature intended to confer authority to make these contracts, in cases where no liability to maintain prisoners already existed. The second section of that statute says, that the means of performing these contracts shall be raised in the same way as the means for subsisting the prisoners had been provided. The whole scope, therefore, of the act, seems to be, that a borough which was liable, might contract with a county, or with another borough, to take that liability off its hands, in the whole or in part. Whether, at the time of the passing of the 5 Geo. 4, there were any boroughs which, without having any jail, had the power of trying prisoners, I cannot tell, but I can hardly conceive such a case. There were such boroughs where the magistrates had the power of committing prisoners ; but there the committals were at once made out to the county jail, and such boroughs were not the subject-matter of contracts at all. I hardly suppose that there was any such thing as a borough with a court of quarter sessions and without a jail. Such a state of things has, however, now arisen, because there has been, to a corporation newly created, and not having a jail, a grant of the power of holding a court of quarter sessions ; but we cannot, therefore, strain the words of a former statute to adapt them to a state of things not in existence when that statute was passed. Under these circumstances, it appears to me that the plain words of the 5 Geo. 4. refer to cases only where a jail does exist : that the present is not a case of that sort, and consequently, that this not being a case in which the statute had been properly followed, the *certiorari* must go.

Mr. Justice Williams.—I also think that this case must be decided by the 5 Geo. 4, and that the jurisdiction of the justices must be considered with reference to the provisions of the statute. Now, so considering the matter, I am clearly of opinion that the justices of the county could not make a contract of this sort with the authorities of a borough where no jail was already in existence, for that was not a case contemplated and provided for by the 5 Geo. 4. Some remedy for the inconvenience now arising must be created by the legislature. We cannot strain the words of the statute for such a purpose.

Mr. Justice Coleridge concurred.

Lord Denman, C. J., (who had heard part of the argument, and had then been obliged to leave the Court to attend her Majesty in council, but returned before the arguments were concluded) said : As far as I have been able to follow the argument, I must say that I entirely agree with my learned brothers in the view they have taken of the case.

Rule absolute.—*The Queen v. The Justices of Lancashire, in the matter of the borough of Manchester*, M. T. 1839. Q. B. F. J.

## Queen's Bench Practice Court.

**CONTRACT.—CONSIDERATION.—BREACH.—ATTORNEY.—COSTS.—ARREST OF JUDGMENT.**

*A declaration against an attorney to recover one-half of certain costs, to which the client has become liable in consequence of the attorney's negligence, should disclose that by an agreement between the parties the claim of the client in respect of the attorney's negligence and the rest of the costs, is waived, otherwise a sufficient consideration will not appear.*

Petersdorff obtained a rule for the arrest of judgment in the present case, on the ground that a sufficient consideration did not appear on the declaration for the defendant's promise. The declaration was in the following form:— That heretofore, and before the commencement of this suit, and before the making of the promise by the defendant hereinafter next mentioned, to wit, on the 1st day of October, 1837, the defendant was, and from thence continually has been, and still is an attorney and solicitor, and as such, then prosecuted and defended divers suits and actions: and therefore, the plaintiffs, to wit, on the day and year aforesaid, retained and employed the defendant at the defendant's request, and on his solicitation as such attorney and solicitor as aforesaid, to prosecute and conduct a certain action by and at the suit of the plaintiffs, and for them and on their behalf, against one J. H. G. Johnson; and it was then arranged and agreed between the plaintiffs and the defendant that the defendant was to prosecute and conduct the said action against the said J. H. G. Johnson, on the terms and conditions that, in the event of his not being successful in getting his (the defendant's) costs and charges as such attorney as aforesaid for prosecuting and conducting the said action at the suit of the said plaintiffs, from the said J. H. G. Johnson, then and in that case, he, the defendant, was only to charge whatever money he, the defendant, should necessarily expend out of pocket in conducting and prosecuting the said action against the said J. H. G. Johnson, or any other action at their, the plaintiffs' suit; and the plaintiffs aver that afterwards, to wit, on the day and year aforesaid, the defendant, as such attorney and solicitor as aforesaid, commenced and prosecuted the said action against the said J. H. G. Johnson, at the suit of the said plaintiffs, on the terms aforesaid; and thereupon, in consideration of the premises, and that the plaintiffs had promised the defendant, at his, the defendant's request, to allow him, the defendant, to receive and retain such costs and charges as aforesaid; and under the terms aforesaid, he, the defendant, before he commenced the said action at the suit of the said plaintiffs against the said J. H. G. Johnson, and before the commencement of this suit, to wit, on the day and year last aforesaid, promised the plaintiffs to use due and proper care, skill, and diligence as such attorney as aforesaid, in and about his prosec-

uting and conducting the said action against the said J. H. G. Johnson for the plaintiffs; nevertheless, the defendant not regarding his said promise, did not, or would not, use proper care, skill and diligence as such attorney or otherwise in or about his prosecuting and conducting the said last-mentioned action against the said J. H. G. Johnson; but on the contrary thereof, prosecuted and conducted the said action against the said J. H. G. Johnson in a careless, negligent, illegal, unskilful and improper manner; in this, to wit, that afterwards, to wit, on the day and year last aforesaid, he, the said defendant commenced the said last-mentioned action by a certain writ of *capias* against the said J. H. G. Johnson, the said writ of *capias* having been issued out of her Majesty's Court of Exchequer of Pleas at Westminster, on which said writ of *capias* he, the said J. H. G. Johnson was afterwards, to wit, on the day and year last aforesaid, arrested and taken by the body by the sheriff of the county of Middlesex, to whom the said writ of *capias* was then directed, upon which said arrest of the said J. H. G. Johnson there was not any proper copy of the said writ of *capias* delivered to the said J. H. G. Johnson, by and in consequence of the default, negligence, want of skill, and improper conduct of the defendant as such attorney as aforesaid, but only a certain supposed copy thereof, which said supposed copy was, nevertheless, defective, irregular, and faulty, in this, to wit, that it contained no copy of the date of the aforesaid writ of *capias*, but a space was left in the said supposed copy for the insertion of the said date, blank and unfilled up at the time of the delivery of the said supposed copy of the said writ to the said J. H. G. Johnson, by reason of which said carelessness, negligence, improper conduct, want of skill, and default of the said defendant in this behalf, the said writ of *capias* and all other the proceedings in the said action, afterwards, to wit, on the first day of November in the year last aforesaid, were set aside by rule of the honourable Court of Exchequer of Pleas, being the court in which the said action against the said J. H. G. Johnson was commenced, and in which the proceedings in the same then remained, with the costs to be paid by the plaintiffs to the said J. H. G. Johnson, and thereupon and thereby the plaintiffs were then forced and obliged to pay, and did then necessarily pay a large sum of money, to wit, the sum of 14*l.*, to the said J. H. G. Johnson, being the amount of the costs and charges in and about the setting aside of the said proceedings, all of which said several premises the defendant then had notice, to wit, on the day and year aforesaid; and then, in consideration of the premises, promised the plaintiffs to pay them half the said costs which the plaintiffs had so incurred and paid as aforesaid to the said J. H. G. Johnson, amounting to a large sum of money, to wit, to the sum of 7*l.*, on request, yet the defendant hath disregarded his last mentioned promise." The declaration concluded in the usual form.

Ryland and Knowles shewed cause against

the rule. In *Langridge and others v. Dorville*,<sup>a</sup> it was held that where a party gives up a suit instituted to try a question, concerning which the law is doubtful, that is a good consideration. Here there is a sufficient consideration for a promise to pay a stipulated sum. In this case the present rule ought consequently to be discharged.

*Cur. adv. vult.*

*Coleridge*, J.—Several points were raised in arguing this case, but the only one on which I shall give an opinion, is on that in arrest of judgment. The declaration is singular; it is in *assumpsit*, and it states that the defendant was an attorney, and that he agreed to conduct certain actions on certain terms; and that he did accordingly prosecute an action, and that in consideration of the premises he promised the plaintiffs to use due and proper care, skill, and diligence, as such attorney, in conducting the action. Here one would have thought was a sufficient promise alleged, and the declaration goes on and assigns a breach, and specifies what the exact failure was in properly conducting the cause; namely, that through the negligence of the defendant, the writ of *capias* was set aside with costs; and that the plaintiff was thereby forced to pay 1*l.* for costs. Now, I should have thought that that was stated by way of special damage; but then the declaration goes on to state another promise, that in consideration of the premises, the defendant promised to pay half the amount of those costs, and alleged a breach by non-payment of the 7*l.* Now no rule is more clear in law than that the consideration for a promise must move from the plaintiff; then I must see what this plaintiff has done or suffered, or what the defendant has gained. The detriment to the plaintiff must be the immediate consideration for the promises alleged. Suppose an assault had been committed, and an action of *assumpsit* was brought for non-payment of a sum of money agreed to be given for the injury done, and the declaration did not state a release of action for the assault. It is not, therefore, enough that there should be a collateral consideration for the promise, but there must be an immediate consideration. In this case the consideration stated is, that for the loss of 1*l.* by the plaintiff through the defendant's neglect, the defendant promised to pay 7*l.*, but there is nothing to shew that the plaintiff may not sue for the whole 1*l.* the very next day. There is, therefore, no sufficient consideration alleged, and the judgment must be arrested.

Rule absolute accordingly.—*Smart v. Chell*, M. T. 1839.—Q. B. P C.

#### THE EDITOR'S LETTER BOX.

We think it clear that the receipt of a salary during clerkship, will not in any way prejudice

the party's application for admission; nor will the covenant for payment thereof, contained in the articles, at all invalidate them.

We have already given insertion to so many letters on the subject of the questions put at one of the examinations, regarding an infant's disability to execute a cognovit, that we must, though with great regret, decline printing the able, and rather long letter of H. On the general subject of the examination, our correspondent thus concludes. "I would not have it supposed that I adopt the opinion expressed by "An Old Subscriber," that the examinations have been unfair. On the contrary, I am bound to say that I consider them generally to have been very suitable to the object they had in view, and this opinion will perhaps be looked upon as the more valuable when I state that I have had occasion to watch very closely the course which the Examiners thought proper to pursue, from the commencement of their duties down to the present time, with a view to assist my pupils more effectually in preparing for the ordeal."

We believe there has been no regulation such as that mentioned by G. D. H. as to classifying the candidates at the examination, according to their degrees of proficiency. We have no doubt that due notice will be given of any alteration in the mode of proceeding.

Some of the general remarks of A. E. F. shall be given at an early opportunity; but the subject of an Infant's Liability is exhausted.

If B. R. W. will compress his observations on the examination into a short compass, we will insert them. The substance of his letter might be given in one half the space. A considerable part of it is merely addressed to the commissioners of the Examiners; but we presume they must act on certain general rules, and cannot indulge their feelings of pity for the unsuccessful. Should he favour us with any more letters, we request the favour also of his paying the postage.

The letters of Y. S. Y., H. D. D., P., W. B. D., R. C. S., J. B. W., J. E., jun., and "A Constant Reader," have been received, and will be inserted as early as practicable.

H. C., a correspondent on the subject of the Interests of Married Women, refers to the case of *Lee v. Priaux*, 3 B. C. C. 381.

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**THE PENNY POSTAGE.**—We are now making arrangements to forward the Legal Observer from the Office regularly to any place within the penny delivery, WITHOUT ANY ADDITIONAL CHARGE; and on the complete measure coming into operation, it will be supplied to subscribers in any part of the kingdom on the same terms.

# The Legal Observer.

MONTHLY RECORD FOR DECEMBER, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## LAW OF ATTORNEYS.

### APPLICATION TO STRIKE AN ATTORNEY OFF THE ROLL.

22 Geo. 2, c. 46, s 11.

Sir William Follett.—My Lords, this is a rule which has been obtained, calling upon Mr. William Willis to shew cause why he should not be struck off the roll of attorneys, and why William Allen should not be committed to the prison of the Court.

My Lords, — This case proceeds on the statute of the 22d of George the 2d, cap. 46, sec. 11; and I will first of all call your Lordships' attention to the act of parliament, and the decisions that have taken place upon that act, before I state the facts of the case, apprehending as I do that the facts will not bring this case under that act. The statute of the 22d of George the 2d recites, “that whereas divers persons who are not examined, sworn, or admitted to act as attorneys or solicitors in any Court of Law or Equity, do, in conjunction with, or by the assistance or connivance of certain sworn attorneys or solicitors, and by various subtle contrivances, enter themselves into, and act and practise in the office and business of attorneys and solicitors, to the great prejudice and loss of many of his Majesty's subjects, and the scandal of the profession of the law: be it therefore enacted that from and after the 29th of September, 1749, if any sworn attorney or solicitor shall act as agent for any person or persons not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be anywise made use of, *upon the account*, or for the profit of any unqualified person or persons, *or act in any respect as an attorney or solicitor*, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the Court from whence any such process did issue on oath founded thereon as aforesaid, then and in such case every such attorney or solicitor so offending shall be struck off the Roll, and for everafter be disabled from practising as an attorney or solicitor, and in

that case, and upon such complaint and proof made as aforesaid, it shall and may be lawful to and for the said Court to commit such unqualified person so acting or practising as aforesaid to the prison of the said Court for any term not exceeding one year.” Now, my Lords, this rule is obtained against Mr. Willis, who is, and against Mr. Allen, who is not, an attorney of this Court; and the first part of the rule calls upon Mr. Willis to shew cause why he should not be struck off the roll, the next part of the rule calling upon Mr. Allen also to shew cause why he should not be committed to prison, the ground being that Mr. Willis has permitted Mr. Allen to act as an attorney by permitting him to make use of his name upon various occasions. This act of parliament, as your Lordships see, is an extremely penal one, and there have been various decisions upon it, and the first of those decisions to which I shall call your Lordships' attention is in a case which I have before me, which is a decision of the Court of Common Pleas, 2 Bing. 74, *in the matter of Garbutt*. It is a short report, and therefore I will read the whole of it. “Peake, Serjeant, moved to strike Garbutt off the roll of attorneys and to commit one Palmer, upon an affidavit which stated that at a town eight miles off from that in which Garbutt lived, Palmer, who had been Garbutt's clerk, resided and carried on business at an office, over which was written “Garbutt's Office,” and that Garbutt, though he attended the town on market days, never entered this office, but transacted all his business at an inn. But the Court said that however they might reprobate in an attorney the practice of thus stationing his jackalls about the country, they could not visit his conduct with consequences so highly penal, unless the affidavit shewed a participation in profits, *or something like it.*” My Lords, all the cases in this Court, it will be seen, have likewise gone upon the ground that there must be proof of a participation in the profits to bring the case within the act of parliament, but that if there has been no participation in such profits, the case is not one which

can be brought within the act of parliament. Among other cases bearing out that proposition, my Lords, there is a case in 5 Barn. and Ald. of *Ex parte Whutton*, which was a case where a rule *nisi* had been obtained "calling upon an attorney to shew cause why he should not be struck off the roll for having acted as the agent of John Radford, a person not qualified to act as an attorney, and for permitting his, Whutton's, name to be used upon the account and for the benefit of Radford, and for sending processes to Radford, thereby making him to appear to act or practise as an attorney of this Court, knowing him not to be qualified. The rule also called upon John Radford to shew cause why he should not be committed to the prison of this Court;" then it sets out the enactment of the 22d of George the 2d, and then goes on to say "this case was heard last term, and the matter was referred to the Master who now reported the following facts to the Court; Radford, who was a bailiff, had upon several occasions written to Whutton, the attorney, for writs, and the latter accordingly sent such writs without knowing anything of the parties or of the circumstances; but Radford never represented himself as an attorney, nor had been considered as such. He was well known to be a bailiff, and his offers to his employers had always been to collect debts for them, and (if necessary to sue for them) to employ an attorney." It is stated there he was well known to have been a bailiff; that he did not profess to act as an attorney, but had been a bailiff, and was known to have been a bailiff, and to collect debts; and if it at any time became necessary to sue, he then employed an attorney. "He never looked for any profit upon the law proceedings, but merely payment for the service of the writ. The attorney had no profit beyond the profit usually charged upon suing out the writ, and this he expected the bailiff to receive for him and account for." Lord *Tenterden* there says, "Upon the facts reported to us by the Master we are of opinion that this is not a case within the act of parliament, but at the same time we think this is a most improper practice." That is another question whether or not he was sincere in acting as an attorney, and whether he was acting improperly in practising; but it is a different thing when the case is under an act of parliament, where one party, if guilty, is to be struck off the roll, and where you are to visit the other party with punishment by sending him to prison. The judgment then proceeds to say, "It is the duty of an attorney to communicate with his clients, and to give his attention to their concerns. If a bailiff be allowed to obtain writs in the manner stated in this report, the client will be wholly deprived of that attention which he ought to receive from the attorney; and although this case be not within the statute, still the Court in virtue of its general jurisdiction over attorneys, has the power of restraining their practice, and, if repeated, they will be disposed to visit it very severely; but as this is the first time that such a matter has been presented to the consideration of the Court, we do

not think it right to order the attorney to be struck off the roll in this instance; but we think the purposes of justice will be sufficiently answered by ordering that this rule shall be discharged *on payment of the costs by the attorney.*"

My Lords,—there is a more recent case in this Court, which is, *In the matter of King*. 1 Adol. & Ellis, 560, which is this:—A rule had been obtained calling upon King to shew cause why he should not be struck off the roll of attorneys of this Court, and upon Tredwell to shew cause why he should not be committed to the prison of this Court for such term as the Court should think fit, pursuant to the 22 Geo. 2. The rule was obtained upon affidavits, stating that King was an attorney having an office and carrying on business in London; that an office was opened last year in King's name, at a house in Evesham, Worcestershire,—that Tredwell, who was an auctioneer and an accountant, resided upon the premises,—that King's name appeared on the house door, and likewise the inscription "Tredwell, Auctioneer;"—that Tredwell had in several instances served processes, written letters, and taken other steps in law proceedings, sometimes stating that he acted for King, and sometimes using expressions of a more ambiguous kind, and that King did not attend at the office." It was then sworn that in a conversation with Tredwell as to a certain writ, said to have been issued by King and served by Tredwell, Tredwell said, "that he had been obliged to do what he had done for the support of himself and family, the attorneys of Evesham having refused to employ him; and the deponent stated that lie had no doubt from this conversation, that Tredwell had caused the said writ to be issued for his own profit, but nothing further was alleged as to any participation of profits between Tredwell and King. The affidavits of King, Tredwell, and others in answer admitted that King was resident in London, but stated that he used the office at Evesham as a branch office, and occasionally attended at it, and that Tredwell acted there solely as clerk, and had never transacted business there for his own profit. Sir *James Scarlett* now shewed cause, and contended that the affidavits in support of the rule made out no case, as they neither stated a participation of profits by Tredwell, nor even the belief of the deponents that he had on any occasion shared the profits of the business." Mr. Justice *Williams* interrupts Sir *Frederick Pollock*'s argument thus, and says,—"In a case in which I once moved for a criminal information, the same objection was taken to the affidavit as that which is now made. I said that the affidavit presented facts to the Court from which they might draw their own inferences; but Mr. Justice *Holroyd* answered that affidavits in such a case were insufficient if they did not state the belief of the deponents that the parties moved against had acted from a corrupt motive." Lord *Denman*, in answer to that observation, says "That is very good sense, and the position is a stronger one than

the present case requires. Under this severe and summary statute, one would wish to see that those who bring the parties before the Court are really persuaded that they have made themselves liable to the penalties of the act. The persons applying for this rule ought to have stated their belief that the profits were participated in, or at least sufficient grounds for such belief. If they entertain it, (and it will not be contended that a prosecutor ought not to believe the truth of the charge,) why should they not state the fact of their belief on oath?" Then his Lordship refers to the case of *Ex parte Garbutt*, and says,—"therefore the foundation of the rule fails, and it must be discharged." Mr. Justice *Tunton* follows that up by saying "I am of the same opinion, but *an attorney residing in London ought not to employ an auctioneer at a distant place to carry on business as his clerk.*" My Lords, the effect of that case is, that it establishes therefore this, that there must be a participation in the profits, and that if there is merely a statement of improper conduct on the part of the assistant or the clerk, that mere statement is not enough to bring it within the act of parliament; but that in order to bring the case within the act of parliament, whether the person be acting as a bailiff, or as an auctioneer, there must be an actual proof that he had a share in the profits.

*Mr. Justice Coleridge.*—Or he may have the whole of the profits.

*Sir W. Follett.*—Yes, just so, my Lord; he may either have the whole of the profits, or he may have a share of the profits of the business transacted; but if he is merely acting as the clerk of a person, and is serving him, and is receiving a salary from that person who is an attorney, that is not a case within the contemplation of the act.

*Lord Denman.*—I suppose these facts are admitted: I presume you say there is some ground for what is stated, Sir Frederick?

*Sir W. Follett.*—I will first call your Lordship's attention to the affidavits.

*Lord Denman.*—If the facts are agreed upon, that will be best,

*Sir Frederick Pollock.*—No, my Lord, the facts are by no means agreed upon. The affidavits upon which the rule has been obtained are certainly free from the objection that has been stated.

*Sir W. Follett.*—They are not free from the objection of stating these matters only as to their belief; they state they *believe* he is in the participation of profits, while the affidavits which I have, shew there is not the slightest ground for that belief.

*Lord Denman.*—You had better read the affidavits.

*Sir W. Follett.*—They state their belief only as far as it goes.

*Sir F. Pollock.*—They state their belief in a way that makes it impossible for any body else to doubt it.

*Sir W. Follett.*—I am afraid, my Lords, it will be necessary then for me to draw the attention of the Court to the facts of the case,

although my object was in calling the attention of the Court to the law, to shew that, unless there be a participation in the profits, it is not a matter that comes within the act of parliament. [Sir *W. Follett* proceeded to read several passages from some of the affidavits on which the rule *nisi* was granted, the substance of which will sufficiently appear from the further observations of counsel.] The first thing is, that the deponent has seen several letters in the name of Allen, or with his name signed to them (not professing to have any other person's name) applying for the payment of certain debts. Now I must beg to call your Lordship's attention to that fact which is mentioned in this affidavit. Mr. Allen was in the habit of writing letters for the purpose of recovering debts; if the debts were not paid, actions were commenced in various attorneys' names, some residing in the country, and some being resident in London, for the purpose of recovering the amounts, either in the County Courts, or in other Courts. There is nothing at all to connect Mr. Willis in any way; the whole object in his acting as he did, appearing to be that he was employing different attorneys to sue for those debts. The affidavits state different circumstances, although all tending to the same matters, relating to writs being issued and served, and to letters having been written. I do not know that it is necessary to trouble your Lordships with the minutiae of all those affidavits, although some of them vary the belief. There are a considerable number of affidavits; but I do not know that any other complexion is to be had from them as to a participation in the profits,—one stating that this transaction is for the purpose of evading the law,—the other stating that it is for their mutual benefit and profit; but there is no statement otherwise than that with regard to their receipt of profits; and therefore I apprehend there is nothing wherewith to draw a conclusion that this gentleman has been a participator in any profits whatsoever.

Now, my Lords, there is an affidavit of Mr. Allen, in answer, in which it is impossible that there could be a more full denial than he has given. I apprehend that the fact of Mr. Allen wishing to increase his business of a law stationer is sufficient not to bring either of these parties within the meaning of the act of parliament; for he says I am willing to act as your clerk, but you must allow me to carry on my business in the mean time. The deponent and Mr. Willis entered into an agreement, by which Mr. Allen was to be allowed a salary of 40*l.* a-year, and 10*l.* for the rent of the house, and there is a distinct statement on his part, that he participated in no way whatever in the profits.

There is also an affidavit of Mr. Willis, in which there is a *bond fide* agreement set out that Mr. Allen was to receive 40*l.* a-year, and no more, as a salary, and was to receive no share of the profits whatsoever; and there is the statement of Mr. Willis also, that he has been in the habit of attending at the office at

Banbury on market days; while your Lordships will remember the affidavits on the other side state a belief that Mr. Willis was never at Banbury; and there is also the affidavit of several persons who speak to their having, on different occasions, seen Mr. Willis there. There are also the various affidavits of persons who have not only seen Mr. Willis at Banbury, contrary to the statements of belief made on the other side, but who have actually employed him as their attorney,—persons who have seen him at his office, and who have personally given him instructions at Banbury to act on their behalf; while on the other side there is a statement that the whole of the transaction was done by Mr. Allen, and that he was the only person who was seen there. Therefore it appears to have been a fact well known that Mr. Willis was an attorney in Banbury, and that Mr. Allen was not. Mr. Willis is alone the person who acts. The greater part of the business transacted there is to recover debts,—the object of all parties is to get their debts recovered. Mr. Willis employed Mr. Allen to transact his business, Mr. Willis attending at Banbury on market days, and then looking to the business himself; clearly shewing, as I apprehend, that the case can upon no consideration be brought within the provisions of the act of parliament.

The whole of the statements upon the other side, as your Lordships see, amount merely to the fact of a belief; it is not a statement of actual facts, but a mere belief, negatived by the opposite party denying the statements most fully; not only denying them in words, but bringing facts that bear out the denial of a nature that admit of no doubt. This, therefore, while it is a case which, as I apprehend, cannot be brought within the act of parliament, is also, I conceive, one in which no degree of censure can be visited. It is not like the case before Lord Tenterden, in which he pronounced a censure on the attorney for allowing use to be made of his name. In this case the party has been acting *bond fide*; living, as he does, at Banbury—transacting the business for this attorney when he was not there—employed by that attorney as his clerk—receiving a salary from that attorney for his services; but not at all sharing in any of the profits. Upon these grounds, therefore, I submit this matter will be fully answered by your Lordships saying that this rule ought to be discharged.

**Mr. Watson.**—My Lords, the cases that have been cited by Sir William Follett shew distinctly that the Courts of Westminster Hall have not acted upon this act of parliament, unless it has been shewn, and that most clearly, that in the case before them the party who was not an attorney had been practising as such for his own benefit, that he had either derived the whole or a part of the profits from such practice. In all the cases in which the act of parliament has been acted upon, it has appeared clearly and distinctly that the party has been in the receipt of the profits that have been derived.

My Lords, before I proceed further I will beg to call your Lordships' attention to a case in 2 Adol. & Ellis, 686, *In the matter of Palmer*, which was a case that came on before this Court; and it is only necessary, in my opinion, to cite that case to clear away all doubts that may exist as regards a participation in profits. The case having been referred to the Master, and he having made his report, in the occasion of the argument before the Court upon that report, Lord Denman said,—“in the first of these two instances it appears that writs having Palmer's name upon them were placed in the hands of an officer to be executed; and that Palmer stated as to some of those writs that they related to business of which he was to have the profits; and as to others, that he was not bound to pay the officer for executing them, because the business was Edmunds's. In the other instance an action was carried on in Palmer's name, but Edmunds appeared and acted as the attorney, and claimed the costs. The report does not state who actually received those costs, but the suit was carried on with Palmer's knowledge and concurrence, Edmunds appearing and acting as an attorney in the case in which Palmer's name was employed, and in which he did not act.” So that your Lordships see the whole of the judgment goes upon the question of profits. Mr. Justice Littledale says, “the two instances of practice in matters arising in this Court, are not very explicitly brought before us; but in the first case we have the admission of Palmer that some of the writs bearing Palmer's name belonged to Edmunds, and some to Palmer, and it seems that Edmunds had the benefit of some. And those instances are helped out by the circumstance of their residing together, and Edmunds being the articled clerk to Palmer. It must upon those cases be taken that Edmunds had the benefit of part of his business with Palmer's concurrence. In the second instance an action was carried on in Palmer's name, and with his concurrence, in which he never appeared, but Edmunds acted in it; and under those circumstances it must be concluded that he did so with Palmer's approbation, and Edmunds claimed the costs. It must therefore be taken that the whole was done with Palmer's concurrence;” which, this being a penal act of parliament, was necessary to appear. In this case your Lordships see all the deponents who state their belief as to these matters, say they don't know Mr. Willis. They state to the best of their belief that no such person is known in Banbury, and from that circumstance they draw their conclusion that the name of Mr. Willis is merely put forward to enable Mr. Allen to practise for his own benefit; while the affidavits in answer, which are numerous, not only shew that Mr. Willis is a person known in Banbury, but shew also that in many cases he has actually been employed and consulted personally about them. Although Sir William Follett has gone through the greater part of this case, still I will beg leave to call your Lordships' attention to this part, and particularly to the affidavits.

[The learned counsel then noticed several affidavits of persons who deposed to their being well acquainted with Mr. Willis, and of their knowing him at Banbury.]

The facts of the case appear to be these. Mr. Allen is resident at Banbury; he is employed from time to time to collect in debts for various persons; and in such instances as it became necessary to take legal proceedings, he employed other attorneys before Mr. Willis came to Banbury. Upon Mr. Willis coming to Banbury, it appears, he entered as a clerk to Mr. Willis; and it is most distinctly sworn that he has throughout the whole of these transactions had no participation in the profits whatever.

I could, my Lords, if it were necessary, (which I hardly suppose it is,) go through many cases in which it is clearly shewn that he has been only the clerk to Mr. Willis. I will therefore merely beg your Lordships' attention to the wording of this act of parliament, which has been referred to by those who make this application to your Lordships,—an act of parliament of so penal a nature, as if the parties are found guilty not only to inflict imprisonment upon the one, but also to strike the other off the roll of the Court; an act, the provisions of which, I apprehend, your Lordships will never carry into effect, unless you find it distinctly and clearly proved that the act complained of has been committed. In this instance the whole matter seems to have been grounded upon the fact of non-residence; that appears to have been the main point upon which they proceed, as they all through state that their belief is that Mr. Willis did not reside there, which your Lordships see by our affidavits is most completely negatived.

Now, my Lords, let me for a moment call your Lordships' attention to the mode in which these parties state that there was no participation in the profits. The agreement is set out under which Mr. Allen has acted, and by that it appears he is "to act as the clerk of William Willis from the time,"—that is, from the date of the agreement. Then Mr. Willis makes an affidavit, in which he states that he is a native of Oxford, and that he has for more than twenty years practised in Chelsea, and that he has also practised in Oxford since 1823. Those two affidavits are as decisive as can possibly be, as to the nature of the agreement that had been entered into between Mr. Willis and Mr. Allen.

My Lords, I take it that these affidavits which have been produced in answer are as convincing as possibly can be that the belief spoken to on the other side is unfounded; for your Lordships will remember it amounts but to a statement of belief on the part of those who make this application. In this affidavit Mr. Willis most distinctly swears, that, for the reasons which he there names, he took an office in the town of Banbury; that he attended there upon market days, and transacted business with those who wished for his assistance, and that he alone derived the benefit and the profit that did arise. Mr. Allen is

there; he knows Mr. Allen, and he agrees, as he states in these affidavits, to give him a sum of 40/- a year; but he is not to participate in any of the profits, neither is he to be allowed to practise in any way for his own benefit, nor is he to be allowed to use Mr. Willis's name on any occasion whatever; and therefore, if anything in the shape of a denial to such a charge or an answer to such an application as this is to prevail, nothing, I apprehend, could be more full, or more explicit, than could this answer, being given, as your Lordships see it is, on the part of Mr. Willis.

Mr. Allen then goes through several cases, which are brought forward in the affidavits upon which this application is grounded, in which it is said he signed the name of "Willis and Allen;" and several of those cases are put forward as cases from which a sort of conclusion is to be drawn. I do not wish to refer to them particularly, as I would only take the broad and clear ground upon which the affidavits in answer are based, convinced as I am that they most clearly prove the fact that there has been no participation whatever in the profits. Mr. Allen goes on to deny most positively that he is practising for his own benefit or profit; and says "that he has been employed to collect debts, rents, and so forth; and that when it became necessary to write letters for that purpose, he was in the custom of making a charge for the trouble of writing such letters; but from that circumstance, as I submit, cannot be said in any way whatever to be acting as an attorney. He says he never did practise in any instance; that he has never been allowed to practise by Mr. Willis; and that he never has practised for himself, and never has received any of the profits. Nothing, I apprehend, can be more conclusive than the way in which that is stated in that affidavit.

Now, my Lords, in the affidavits of those parties upon which this application to your Lordships is founded, it is most positively denied that Mr. Willis ever has been at Banbury according to their belief; yet in answer to that assertion upon their part, we have a large mass of evidence to shew that Mr. Willis has been at Banbury; that he has been constantly at Banbury upon market days; and that he has been employed and consulted there upon matters of professional business by those very persons who are making these affidavits. My friend may smile at that assertion, but he knows that statement to be true; and if it were not that I think it is hardly worth while to waste your Lordships' time by repeating those statements, I would go through these affidavits again, shewing, as I apprehend they do most conclusively, that it will be impossible for your Lordships, upon the statements which they contain, to convict these gentlemen under so penal an act of parliament as this, but that your Lordships will say this rule must be discharged.

My Lords, I will just add one word as to the nature of the cases that have been referred to by Sir William Follett. In that case your Lordships will recollect, where the person

against whom the application was made resided at Evesham, the attorney was resident in London, but he attended occasionally at Evesham. It appeared upon the affidavits that that person did not practise for his own benefit, but that he saw the parties on behalf of the gentleman who was resident in London; and in that case the rule was discharged on the ground that the practise was not for the benefit of the person against whom the application was made, but that he was acting merely in the capacity of clerk; and therefore, as I submit to your Lordships, that case is extremely similar to the present. I should be extremely sorry if I have omitted any thing that these affidavits contain which might be at all material to my client's interest; but having called your Lordship's attention to the wording of those affidavits on behalf of those who make this application, I think it is impossible to say they furnish a case upon which, on any ground of special pleading, your Lordships would think fit to charge these gentlemen with the guilt complained of, and punish them under this very penal statute, by striking one of them off the rolls of the Court, thereby for ever destroying his future prospects in life, and by committing the other gentleman to a prison.

*Sir Frederick Pollock.*—My Lords, I trust your Lordships will see sufficient ground to make this rule absolute, or else to adopt that course which has been taken in every one of the cases for many years passed,—in every one to which my friends have referred to by way of authority—namely, referring it to the Master to see what is the real state of the facts between Mr. Willis and Mr. Allen.

At the time my friend adverted to the expression of my countenance, I own I was very much surprised to hear Mr. Watson advert to an affidavit filed by Mr. Willis and Mr. Allen, to which I beg to call the attention of this Court most particularly, for if this rule can be discharged upon such an affidavit, the statute, the very wholesome statute, upon which the application is founded, may be considered from this day forth as practically repealed.

My Lords, I appear before you upon this occasion for no vindictive or interested parties; I am instructed by the Law Society to present this case to the attention of the Court; to lay before the Court the real facts of the case, and when the Court has come to that conclusion which is consistent with its own view of the duty that is imposed on the Court by act of parliament and the general law of the land, neither I, personally, nor those whom I represent, have any interest, or feeling, in preventing Mr. Willis continuing in any practice he may please, or in having Mr. Allen to assist him in that practice.

Now, my Lord, I will take the case as it is disclosed by my learned friends on the affidavits of Mr. Willis and Mr. Allen. Mr. Willis was an attorney of Sloane Street, Chelsea, and, up to 1837, having no business as an attorney at Banbury. Mr. Allen had for two years been clerk to an attorney residing not very far from Banbury, and in the month of

June, 1837, he set about establishing a business as a law stationer and accountant, and between the months of June and September, he obtained the patronage of some persons who were attorneys, as a law stationer, and some persons, who were the clients of attorneys, as an accountant; and both he and Mr. Willis represent that in the month of September, 1837, there was *bond fide* an agreement under which Mr. Willis was to become a Banbury attorney. Mr. Allen was to be Mr. Willis's clerk at 40*l.* a-year, and Mr. Willis was to pay 10*l.* a-year for the use of Mr. Allen's room as an office, and so they represent the business continued down to the time of their making the affidavits in answer to this application. They represent that Mr. Willis having been a sort of lodger with his clerk, in the middle of the year 1838, entered into an agreement by which he became the tenant, and the plate upon the door was no longer "Allen, Accountant," but became altered to "Willis, Solicitor," and "Allen, Accountant." For some time Mr. Allen's name was left upon the door, but at length it was entirely removed. Sometime afterwards, it was again restored, because people came to enquire for him, and wondered what had become of him, he being the person with whom everybody was dealing. There was some agreement with the landlord at which Mr. Willis was not present, and so the business went on down to the time when this application was made to this Court, which was, I believe, in Michaelmas Term, 1838.

My Lords, one of the points in issue is, whether Mr. Willis was or was not, *bond fide* resident at Banbury, from the month of September, 1837, or from the month of June, 1838: whether he was, in any sense of the word, a resident there of any sort? And if your Lordships should be of opinion, that upon the points in issue both Mr. Willis and Mr. Allen have been trifling with their oaths, and been trifling with the respect which they owe to the Court, the one of them being an officer of that Court. I think it is not too much to say that at least it is a case which calls for enquiry.

Your Lordships, after the language which my friends held upon the subject of these affidavits, will be a little surprised at the short statement I am in a condition to make upon that subject, before I read the affidavits over very shortly;—not, my Lords, reading them with a "special pleading" nicely, to see the quantity of special pleading that may be thrown into those affidavits for the purpose of enabling my friends to state, or to appear to state something that the affidavits do not contain, but for the purpose of giving them their true appearance. In the first place, my Lords, it is very remarkable that there is not the slightest evidence from beginning to end in the affidavits of Mr. Willis, that he ever slept one single night in Banbury. A great deal has been said about *bond fide* residence, and that supposed non-residence was not conclusive; but there is not one tittle of evidence from beginning to end to prove that Mr.

Willis ever slept one single solitary night in the town of Banbury, down even to the very moment of his making the affidavit. It is impossible for any person in the condition in which Mr. Willis is, who professes to have a house of his own, and who must have slept either at an inn or at a friend's house in the neighbourhood, not to be able to produce plenty of people to state that they saw Mr. Willis there, and that, in their opinion, no doubt Mr. Willis was in the town transacting business, for he slept at such and such a place in the neighbourhood ;—but no such thing appears—there is not one single scrap of testimony that Mr. Willis ever slept at Banbury, or that he ever breakfasted, or dined, or took any meal there ; nay, my Lords, with the exception of one individual, there is not any evidence that Mr. Willis was ever seen in Banbury, down to the time of making this affidavit, with one single exception. I will read the very words, as in my opinion they scarcely amount to a negative. There is the statement of one person who says he saw him at Banbury—but one single person who is clear to having seen him at any distinct period ; and it is singular that the occasion of his being seen there is one of the very circumstances that I would put my finger upon as a proof of the fraud contrived to be practised. Now, my Lords, I would ask to what end did my friend Mr. Watson refer to the affidavits as a proof of residence, when I am in a condition to shew you that there is not one particle of evidence that Mr. Willis was upon any occasion in Banbury for ten minutes. I will call your attention to the affidavits that have been produced on the other side, and I will first of all go to the affidavits of Mr. Willis and Mr. Allen ; and I do charge (and it is impossible for the Court not to see that that charge is true),—I do charge that those affidavits have been framed with a great deal of art, and the object has been mainly to impose upon the Court.

My Lords, leaving for a moment the affidavits of Mr. Willis and Mr. Allen, here is the affidavit made by a person named Anderson, who is the only person who swears that he ever saw Mr. Willis in Banbury at any distinct time.—He is the only one who swears to Willis having been there upon any particular day. He swears this, he says, "that he resides immediately opposite the house of the said William Willis."—This is a person who resides immediately opposite the house of Willis, and therefore if any person was likely to have seen him frequently, Anderson, I should imagine, would have been that man ; but he merely swears this,—" That he is well acquainted with the said William Willis, and has on many occasions conversed with him in his, the deponent's shop in Banbury aforesaid." This affidavit is made in November 1838 ; and therefore he may have conversed with Willis many times while he was getting up the answer to this very case.—" That he believes the residence of the said William Willis at Parsons Street is not collusive, but *bond fide*."

He does not say, your Lordships see, for what reason he thinks so ; but he says that he has frequently seen him there. He says, " that he is strengthened in that opinion from the fact of his having been present on the first of June last, being the day on which the said William Allen formally delivered possession of the said house in Parsons Street to the said Willis.—So that on the first of June Mr. Allen delivered formal possession of the house to Willis, and Mr. Anderson says that he was present when that was done, and with that exception there is no other person who proves that Willis was ever seen in Banbury, prior to the month of September ; for the next set of affidavits to which my friends appeal are drawn with very great caution. The next is the affidavit of Frost and Ralph, who say,—" They are well acquainted with William Willis, whom they have consulted professionally since his commencing business in Banbury aforesaid." Not a word more,—not a syllable about the time when that commencement took place.—" And are also well acquainted with the said Wm. Allen, &c." That is the whole of that affidavit, and there is not even a date to it, nor does it appear that he ever saw Willis at Banbury till some time just before. He don't say before the application to this Court, and therefore, from all that appears, it may have been after the application.

Then there is the affidavit of George Dumbleton, merely shewing that the possession of the house in Parson Street, which one of the witnesses says he saw delivered upon the first of June, was confirmed afterwards by an agreement with the landlord of the house, not on the 1st of June, but on the 18th of July afterwards. Then there are several other affidavits of persons, stating " that they were acquainted with William Willis since he commenced business at Banbury," but the question all along is, when did he commence business ? My learned friend says it was publicly known he was carrying on business at Banbury ; and there are plenty of persons who make affidavit that they have consulted him. Where are they ? I cannot find them, although Willis states in his own affidavit that he commenced business in September 1837.

Then there is the affidavit of John Robert Judge, one of the plaintiffs in a proceeding complained of in the affidavits filed in support of the rule ; and Judge says, " that he knows William Willis of Oxford,"—he does not say when he became acquainted with him : " that he employed him to recover debts against several persons, and hath also employed William Allen as an accountant." He swears nothing about the residence. It is very remarkable that Mr. Judge is the plaintiff in certain common law proceedings, which appear in the affidavit filed in support of the rule, which proceedings appear to have been accompanied by some notice, which notice is signed in the name of Willis, but in the handwriting of Allen, and describing Willis as an attorney, not of Banbury, but of Sloane Street, Chelsea.

Lord Denman.—We think the case must be

referred to the master, with power to call for such information as he may think fit, and to report thereon to the Court.

*Re Willis and Allen, Q. B. 11th November, 1839*

## PROJECTED JOINT-STOCK TRUST COMPANY.

We are informed that a joint-stock company has been projected to take charge of all the trusts created by wills and settlements, in order to render private trustees unnecessary; and, as it seems, to supersede the professional services of the present race of solicitors, and transfer their duties and emoluments to the solicitors of these joint stock trust companies. The "standing counsel" of such companies will also, of course, take the place of the members of the bar who are now consulted by the practitioners in general. It is true that the plan, as at present put forward, seeks not to interfere with the solicitors of the *cestuis que trusts*, but only with the solicitors of trustees. It is obvious, however, that other companies, if this should succeed, will soon be started, and improve upon the details, if not the principle, of the present, scheme.

The following passages are extracted from a prospectus which has come to our knowledge, and we deem it important to call the attention of our readers to the subject.

"The object is to substitute a public body for individuals in the execution of trusts—to relieve the settlers of property from an embarrassing and doubtful choice, and others from the performance of an irksome and thankless office—to protect estates from the losses too frequently resulting from the incompetence or negligence of trustees or executors—and to supply a responsible agency for the administration of fiduciary interests, free from favor or affection, subject to no influence, and looking only to the discharge of the duty committed to it with fidelity and exactness.

"That which is a man's *business* is generally well and diligently done. At present the execution of a trust is not regarded as a business, and is consequently too often performed in a slovenly and imperfect manner: for this reason an executor or trustee, with adequate remuneration, is in all cases better than an unpaid one; but a company is better than an individual, because no individual, however competent or trustworthy, can offer the same effectual guarantee against loss, as a company regulated by fixed principles, and sustained by a large capital.

"The devolution of trust estates to the heir, devisee, or personal representatives of a trustee, is a continually recurring occasion of incon-

venience and expence; and the uncertainty whether the persons nominated will consent to act—the substitution of others, perhaps the very persons whom the settlor or testator himself might have purposely excluded, in the place of those who may renounce or die, or become incapable from other causes—or the still worse alternative of the whole becoming vested in a single individual by survivorship—are contingencies to which every property held in trust is now subject.

"All these hazards and inconveniences are obviated by vesting the trust in a public body; and, therefore, a company, *whose business it is to administer trusts*, is a manifest desideratum; and the wonder is, that no remedy should sooner have been found for a want so long felt and acknowledged."

The prospectus next sets out the profit to be derived from this wholesale administration of trusts. What will the noble Lords, the Judges in Equity, say to a plan by which part of the rents and profits of infants are to go in payment of the dividends to the shareholders therein, and the salaries and expences of directors, officers, and servants, with all the machinery of a public company.

"Besides the many sources of profit which are open to the company from the judicious investment of its capital, *the trust business alone will, it is confidently hoped, produce a large and steady income, without a corresponding hazard of capital*; and as the assured will be admitted into a liberal participation of all the profits, realised from whatever source, it will be at once apparent that this institution offers to the public advantages exceeding any which it is possible for assurance companies, otherwise constituted, to hold." • • •

"The income arising from the investment of the paid up capital, will belong to the stockholders, and a distribution of the profits on the assurance branch will be made in the proportion of one-fifth to them and four-fifths to the holders, of policies, who have insured on the principle of participation. *The profits resulting from the trust business will be divided in equal moieties between the same class of policy holders and the stockholders.*"

Then comes the proposal of the terms on which the company will take charge of the property entrusted to them; and it will be observed that the quantity of business sought for is very extensive.

"This company will undertake, in consideration of a moderate commission, *all trusts of whatever nature*, such as *marriage settlements*, trusts of accumulation for the benefit of minors or other parties, trusts for the benefit of females in their own right, *executorships*, and fiduciary interests generally, committed to it by individuals, by *litigating parties* or by public bodies.

"The company will adopt the mode of investment pointed out by settlers and testators;

but, if required, the company will guarantee a fixed rate of interest, and the repayment at a defined period of the amount of capital committed to its charge, and will adopt its own mode of investment.

"In all deeds or wills, by which the performance of any trust may be committed to the charge of the company, provision must be made for the payment of the commission, which will vary according to the duties imposed and the services required or performed.

"It will be the general rule of the company to employ solicitors in the conduct of the legal business of such trusts as they may introduce."

In case this joint-stock company should be successful, (which we very much doubt), we do not see why it should not be followed by other projects of the same character. For instance, if wills and settlements can be carried into effect in a better manner than they have been hitherto, why should not suits in Equity, and actions at law, be prosecuted and defended by joint-stock companies? We remember having heard some years ago, that an eminent law Lord had expressed his belief that fifteen attorneys (or some such small number) would be quite sufficient to conduct the legal affairs of the community:—that is, provided there was a sufficient number of Local Courts, with judges and registrars, itinerating in all directions, and Courts of Arbitration and Reconciliation. This joint-stock scheme, kindly to take charge of the property of all married women and children, idiots and lunatics, is a very ingenious addition to the arbitration and reconciliation of all disputes, and the eventual shutting up of Westminster Hall. Some of our readers will doubtless assist us in watching the progress of this Joint-stock Wills and Settlements Execution Company.

#### CHIEF JUSTICE TINDAL'S CHARGE TO THE GRAND JURY AT MONMOUTH.

On Tuesday, the 10th December, the Special Commission was opened. The Judges were, Chief Justice Tindal, Mr. Justice Parke, and Mr. Justice Williams. The following gentlemen were sworn on the Grand Jury:

Lord Granville Somerset, M.P., foreman.

Hon. W. Rodaey.

Sir B. Hall, Bart., M.P.

W. A. Williams, Esq., M.P.

R. J. Blewitt, Esq., M.P.

R. Hamlyn, Esq.

Joseph Bailey, Esq., M.P.

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John Francis Vaughan, Esq.	Charles Marryatt, Esq.
John Jenkins, Esq.	Francis Macdonald, Esq.
Thomas Lewis, Esq.	Wm. Needham, Esq.
Chas. Octavius Swithington Morgan, Esq.	C. H. Powell, Esq.
	J. E. W. Rolls, Esq.

#### The Chief Justice delivered the following CHARGE TO THE GRAND JURY:

My Lord and Gentlemen of the Grand Jury,—Her Majesty having been pleased that we should be assembled this day under commissions issued, not for the holding of an ordinary assize and gaol delivery, but on a special and extraordinary occasion, it has become my duty to lay before you the nature and description of the offences to which those commissions extend, the classes and character of the cases which will probably be brought under your investigation, and the law which will apply to such cases respectively. It is not my intention, nor indeed have I the power, to detail or comment on the circumstances of each particular case upon which you may be called to inquire. And undoubtedly it will be more advantageous on the present occasion, where the committals are unfortunately very numerous upon charges of the highest crime which can affect society, that you should receive only a general exposition of the law, which you may yourselves apply to the circumstances of each individual case, rather than that you should be embarrassed by any previous minuteness of detail of the facts attending each particular case. By such a course, as it appears to me, the ends of justice will be attained with more complete certainty, and with greater satisfaction, both to yourselves and the public. Gentlemen, with the very limited knowledge which I possess on the subject, it would not be expected, neither would it be proper, that I should attempt with any minuteness of description to enter into the history of that transaction which has formed the occasion of our being convened together at the present time. Indeed it is so desirable that you should approach the performance of your duty, without any prepossession in your minds as to the facts which may be proved before you, that I shall purposely abstain from saying more than that it is a matter of public notoriety, that disturbances have recently taken place within this county, of such description and character, and of such magnitude and extent, as to render it highly probable that, amongst other charges, indictments for high treason will be preferred against some of the parties who are supposed to have taken a share in those proceedings. It will, therefore, be my more immediate duty, on the present occasion, to call your attention to the charges which will, in all probability, be brought under your investigation, founded on this transaction; to expound to you, so far as I am able, the law which defines and applies itself to those several charges; to explain the proof that will be necessary to constitute the offence imputed by such charge; and to add such observations relating to the nature and quality of that proof

as will enable you to come to a just estimate of its weight and sufficiency in support of the charges brought before you, and thereby to arrive at such conclusions in each particular case as justice and reason require. The commission of oyer and terminer, one of the commissions under which we sit, is in itself general and unlimited in its terms and extent. It comprehends within it all treasons, misprisions of treasons, all felonies and misdemeanors whatever. But as the only criminal charges that are proposed to be brought before you are those which originate from, or are connected with, the disturbances above referred to, with respect to which, as I have already observed, there can be little doubt that presentments for high treason will be brought forward, my duty will be, in the first place to offer you such remarks upon the law of high treason as may assist you in the performance of the important functions you may be called upon to execute. Gentlemen, the crime of high treason, in its own direct consequences, is calculated to produce the most malignant effects upon the community at large; its direct and immediate tendency is the putting down the authority of the law; the shaking and subverting the foundation of all government; the loosening and dissolving the bonds and cement by which society is held together; the general confusion of property; the involving a whole people in bloodshed and mutual destruction; and accordingly the crime of high treason has always been regarded by the law of the country as the offence of all others of the deepest dye, and calling for the severest measure of punishment. But in the very same proportion as it is dangerous to the community, and fearful to the offender from the weight of punishment which is attached to it, has it been thought necessary, by the wisdom of our ancestors, to define and limit this law within certain express boundaries, in order that, on the one hand, no guilty person might escape the punishment due to his transgression by an affected ignorance of the law; and, on the other, that no innocent man might be entangled or brought unawares within the reach of its severity by reason of the law's uncertainty; and, accordingly, in the Parliament of the 25th year of King Edw. 3, an act was passed, entitled "A Declaration what Offences shall be adjudged Treason;" and upon this ancient statute, expounded, and in some degree enlarged by a statute passed in the 36th year of King Geo. 3, stands the law of treason at the present day, so far as relates to any of the cases which can by possibility be made the subject of your inquiry. The statute of Edw. 3, declares it shall be treason "when a man doth compass or imagine the death of our lord the King (within which designation a Queen regnant is included), or, if a man levy war against our lord the King within his realm, and thereof be proveably attainted of open deed by people of his own condition." The statute afterwards declares it to be understood that in the cases above rehearsed, that ought to be judged treason which extends to our lord

the King and his Majesty. By the more recent statute of Geo. 3, temporary only at first, but afterwards made perpetual, it is enacted "That if any person shall, within the realm, or without, compass, imagine, invent, devise, or intend death or destruction or any bodily harm tending to death or destruction, maiming or wounding, imprisonment, or restraint of the person of the King, or to deprive or depose him from the style, honour, or kingly name of the imperial crown of this realm, or to levy war against his majesty within this realm, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses or either House of Parliament, and such compassings, imaginings, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing or by any overt act or deed, every person convicted in the manner therein declared shall be deemed and adjudged to be a traitor." Gentlemen, it cannot have escaped your observation that in the statute of Edward the substantive offence of treason thereby declared affects the life of the King; in the latter statute, the substantive offence of the several treasons thereby created consists in the compassing, intending, devising, and imagining the perpetration of the several acts therein specified, not in the commission of the acts themselves, but inasmuch as the wicked imaginations of men's hearts are known only to the SUPREME BEING, until they are evidenced to man by outward act; so the former statute has required that before any one should become subject to the penalties of treason he shall be thereto first proveably attained "of open deed;" and again by the latter statute it is enacted, that before any one falls within its penalties he shall express, utter, or declare such his compassings, imaginations, and intentions by publishing some printing or writing or by some overt act or deed. These overt acts, therefore, so required by the statutes, are the means by which the particular treason has been attempted to be carried into effect—they are the instances in which the guilty party has endeavoured to complete the treasonable design—they are the *indicia* or proof of the treason, not the treason itself. It is obvious, therefore, that these overt acts will be found to vary in each particular case. Where the object of the treason has not been actually perpetrated; combination and conspiracies to carry it into effect; meetings to propose, to plan, to mature, or to accelerate its completion; the inciting and procuring others to join such combinations; the knowingly making, procuring, or furnishing arms and ammunition, money, or other necessaries to insurgents, for the purpose of accomplishing their treasonable designs; the administering illegal oaths to blind men to aid each other in such treasonable designs—all these, and many others of the same stamp and character, might be suggested as instances of overt acts of the particular class of compassing or devising, to

which they apply within the meaning of both the statutes. And, gentlemen, as the proof of some overt act or acts is absolutely necessary to support the charge of treason whatever it may be, so must the proof be confined to those specific overt acts which are charged in the indictment, and no other, in order to give the party accused the opportunity of knowing the real charge which is made against him, and to enable him the better to prepare for his defence, for the overt act is that to which the prisoner must apply his defence. And still further, with respect to those overt acts it is to be observed, that in favour of the party accused a statute was passed in the reign of King William the third (7 & 8 W. 3, c. 3,) which enacts "that no person shall be indicted or tried for high treason whereby any corruption of blood arises, but by or upon the oath of two lawful witnesses, either both of them to the same overt act, or one of them to one, and one of them to another overt act of the same treason." And various other advantages and privileges have been granted by the legislature from time to time in favour of persons accused of high treason, and which does not belong to persons charged with other offences.

Having thus endeavoured to explain to you the nature and property of these overt acts, which must be alluded to in the indictment, and by what evidence they must be supported, I proceed to call your attention to the different heads or classes of treason which may be laid in the indictment against the accused.

It is not improbable that one charge of treason may be laid in the indictment to be the compassing and imagining the death of our lady the Queen, and various overt acts may be stated in support of it; and perhaps amongst the rest the levying war against the Queen in her realm, which has been held by many decided cases to be an overt act of that species of treason, as well as a substantive treason in itself; but as there can be no reason to suppose that any direct or immediate intention of injuring the sacred person of the Queen can by possibility be surmised to have existed on this occasion, it will be unnecessary, as it appears to me, to occupy you with any observations on this head of treason: I will proceed, therefore, at once to the only branch of treason which can apply to the circumstances of the present case,—that of levying war against the Queen in her realm, which, as before observed, is a direct and substantive branch of treason under the earlier statute, and the bare compassing and intending of which for the purposes and with the objects mentioned in the latter statute, is made treason by that statute. And in considering the limits and boundaries of this branch of treason we are not left without lights to guide our steps, so clearly has the law been laid down by decisions of courts of law in more ancient times, and the expositions of those text writers on the subject who have been held in the greatest veneration, both by their contemporaries and by posterity, amongst whom I shall only refer.

to the names of Lord Chief Justice Hale and Sir Michael Foster. I shall proceed, therefore, to call your attention to some instances in which the law has been declared and settled upon this head of treason, the better to enable you to apply the evidence which you shall hear to the several indictments; and for this purpose I cannot do better than avail myself of the very words of Foster upon the subject. (Disc. on Treasons, ch. 11.) It has, then, been laid down by undoubted authority that if a large number of persons, assembled together, whether armed with military weapons or not, endeavour, by dint of numbers or superior strength, to effect any object or matter purely of a private nature—as, for example, to prosecute some private quarrel, or to take revenge for some private injury, to destroy some particular enclosure, or to remove some particular nuisance, or generally to accomplish some end in which the particular parties assembled together had, or supposed they had, any private interest, such acts of violence and aggression, however the authors of them may be punishable as for a high misdemeanor, do not amount to a levying of war within the statute of Edw. III.; but every insurrection which in judgment of law is intended against the person of the King, whether to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him,—all such risings amount to a levying of war within the statute. So insurrections to throw down all enclosures, to alter the established law, and change the religion, to enhance the price of all labor, or to open all prisons: all risings in order to effect these innovations of a public and general concern, by an armed force, are in construction of law high treason within the clause of levying war;—for though not levelled at the person of the King, they are against his royal majesty, and, besides, they have a direct tendency to dissolve the bonds of society, and to destroy all property and all government too, by numbers and an armed force. Insurrections likewise for redressing national grievances, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest; risings to effect these ends by force of numbers are by construction of law within the clause of levying war, for they are levelled at the King's crown and royal dignity; and, accordingly, it was held in the time of Queen Anne, that a large body of men, tumultuously rising and assembling together for the avowed purpose of putting down all the meeting houses of protestant dissenters, and proceeding to pull down several, until prevented by force, brought the parties who were guilty of that act within the branch of the statute of levying war against the Queen; and in a more recent case, where a riotous multitude, headed by Lord George Gordon, and acting in concert, with the declared design of pulling down or destroying all chapels belonging to those of the Roman Catholic persuasion, proceeded to put that design in force; there was no doubt but that the facts if proved against the parties

accused, amounted to the offence of high treason by levying war against the King. Gentlemen, an assembly of men armed and arrayed in a warlike manner, with any treasonable purpose, is a levying of war, although no blow be struck ; and the enlisting and drilling and marching bodies of men are sufficient overt acts of that treason, without coming to a battle or an action. And if this be the case, the actual conflict between such a body and the Queen's forces must, beyond all doubt, amount to a levying of war against the Queen under the statute of Edward, and to the offence of compassing or devising to levy war within the statute of George III., provided the design and object and intention of the parties be such as is specified in that act. And as has already been adverted to, it is quite unnecessary to constitute the guilt of treason that the tumultuous multitude should appear to be accompanied with the pomp and pageantry of war, or with military array ; insurrection and rebellion are more humble in their first infancy ; but all such external marks of force will not fail to be added with the first gleam of success. In case, therefore, any indictment for high treason should be founded on the levying of war, or the compassing or intending to levy war against the Queen, you will, in the first place, direct your attention to the evidence which shows the object and motive of the rising ; whether it was to effect some general and public end, in which the whole community are concerned equally with the insurgents, such as the introduction of any great change or innovation in the government or the laws of the land, by dint of numbers or violence ; or, whether it was confined to the effecting of any private, or local, or particular object ; and it will be convenient that you should, in the next place, advert to the overt acts alleged on the face of the indictment, and then determine for yourselves whether they, or any of them, are proved by two witnesses in the manner before adverted to ; one of such overt acts being of necessity to be proved to have taken place in this county, in order to give you jurisdiction. Gentlemen, it may be proper to inform you that, in the case of treason, the law knows no distinction between principal and accessory. All who partake in the treason incur the same guilt, and are liable to the same punishment. The treasonable design once established by the proper evidence, the man who instigated, incited, procured or persuaded others to commit the act, though not present in person at the commission of it, is equally a traitor to all intents and purposes, as the man by whose hand the act of treason is committed. He who leads the armed multitude towards the point of attack, and then retires before the blow is struck ; he who remains at home planning and directing the proceeding, but leaving the actual execution of such plans to more daring hands ; he who after treason has been committed, knowingly harbours or conceals the traitor from the punishment due to him—all these are equally guilty in the eye of the law of the crime of high treason.

Gentlemen, I am not aware that any case will be brought before you where the charge will be that of misprision of treason. If such, however, should be the case, it will be unnecessary to say more upon that species of offence than that it pre-supposes a treason to have been actually committed by others, and that the person charged with the offence, knowing both the traitors and the treason, but without either himself consenting or being a party to the treason, has refused or neglected to make a full and fair disclosure of such his knowledge, within convenient time, to a magistrate or some one in authority : it is sufficient to describe the offence without any further discussion. Gentlemen, it is very possible that bills of indictment may be brought before you, charging the acts of violence committed by some of the individuals who formed a part of the assembled multitude as felony only, not as treason ; for he who shoots or attempts to shoot or wound another is, as you well know, under certain circumstances, guilty of felony, notwithstanding the very same act, when considered with a reference to other circumstances, may amount to the crime of high treason. Again, bills of indictment may be preferred against some who participated in the unlawful meeting, but to a less degree, charging them only with the offence of riotously and seditiously assembling themselves together. But with respect to such charges, gentlemen, conversant as you are in the laws relating to offences of that nature, I hold it to be unnecessary to offer a single observation. Gentlemen, I fear I have already trespassed too long upon your attention, but the importance of the subject which I have felt it incumbent on me to discuss in reference to the just performance of the duties on which you are about to enter, and the rare occurrence (for which we cannot be too thankful) of any occasion which calls for such discussions, must plead my excuse. I cannot, however, conclude my observations without expressing the sincere regret and pity which I feel, not alone, I am sure, but in common with yourselves, and with all other men of sound principles, on the occasion of the recent disastrous occurrences ; I would add, also, my most earnest hope that it may be found in the result that the great majority of those who may have been involved in the guilt of these transactions, have been misled by the arts of wicked and designing men, and have thus sinned through ignorance and blindness, rather than from premeditated guilt ; and I can suggest no remedy which can be applied successfully to counteract a state of mind and feeling so unhealthy and diseased, and infecting so large a portion of the community, except the diffusion amongst them of the benefits of religious instruction, and of a sound religious education amongst the rising generation ; so that as the younger part of the community advances to manhood, they may feel the conviction of the wholesome truth, that they are bound to yield obedience to the laws of their country ; not from the terror only which the law inspires, but from a much higher and more binding motive,

the fear of the Almighty, and from the thorough belief that the powers which be "are ordained of God." Gentlemen, in conclusion, I entreat you that in approaching this investigation you will dismiss from your minds all which you may have heard upon the subject before you entered this Court: and that in the performance of your important office, whilst you will rejoice when the weight of evidence is so light that you can consistently with your duty, at once dismiss the party to his liberty and his home, you will at the same time watch over yourselves with jealousy—that you will weigh the evidence brought before you with a firm, steady, and uncompromising mind, looking to the performance of your duty and to nothing beside, and utterly regardless of all consequences which may follow from the performance of it. Gentlemen, my learned brethren and myself will be at hand, whilst you are engaged in the performance of your arduous labours, and ready at all times to lend you our assistance in any case in which doubt or difficulty as to the law should occur.

#### LIST OF NEW PUBLICATIONS.

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#### MASTERS EXTRAORDINARY IN CHANCERY.

From November 26th to December 20th, 1839, both inclusive, with dates when gazetted.

Jones, Benjamin, Llanelly, Carmarthen. Nov. 29.

Borlase, Walter, Penzance, Cornwall. Dec. 6.

Fairbank, David, Darlington, Durham. Dec. 6.

Teale, William, Leeds, York. Dec. 10.

Giles, Henry Edward Broissant, Hanley, Potteries Stafford. Dec. 10.

Cheshire, Barnabas, Birmingham. Dec. 10.

Williams, Edward, Brecon. Dec. 10.

Sadler, John, Thralby, York. Dec. 17.

Willders, Gervase William, Bourn, Lincoln. December 20.

Debyshire, Robert Richard, Liverpool. Dec. 20.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From November 26th to December 20th, 1839, both inclusive, with dates when gazetted.

Loosemore, Robert, and Clement Govett, Tiverton, Devon, Attorneys and Solicitors. Nov. 26.

- Dawes, W., and H. Fraser, Serjeant's Inn, Fleet Street, Attorneys and Solicitors. Dec. 6.
- Wingfield, Henry C., and O. D. Mordaunt, Great Marlborough Street, Attorneys and Solicitors. Dec. 10.
- Walker, Francis, and William Pickthall, Ambleside and Kendal, Westmoreland, and Hawkeshead, Lancaster, Attorneys and Solicitors. Dec. 20.

#### BANKRUPTCIES SUPERSEDED.

From November 26th to December 20th, 1839, both inclusive, with dates when gazetted.

- Peachey, Thomas, Brighton, Sussex, Linen Draper. Nov. 29.
- Beesley, Richard George, Manchester, Cotton Spinner. Nov. 29.
- Noke, Mark, Maidenhead, Berks, Upholder. December 6.
- Hague, William, and Samuel Hague, Manchester, Commission Agents and Yarn Merchants. Dec. 10.
- Baker, John Howard, Birmingham. Dec. 13.
- Jeffes, John, Harleston, Norfolk. Dec. 13.

#### BANKRUPTS.

From November 26th to December 20th, 1839, both inclusive, with dates when gazetted.

- Alves, Duncan Davidson, James Steele, and William Harrison, Lime Street Square, London, Merchants and Underwriters. Oliver & Co., New Bridge Street. Nov. 26.
- Allen, Joseph, Drury Lane, and Golden Lane, Barbican, Tea Dealer and Grocer. Gibson, Off. Ass.: Smith, Wilmington Square. Nov. 29.
- Ahrenfeld, Jacobi, Manchester, Manufacturer. Clarke & Co., Lincoln's Inn Fields: Grundy, Bury. Dec. 29.
- Boyd, Charles, the elder, now, or late of Victoria House, Kensington Gravel Pits, and also of the Custom House, London, Picture Dealer. Johnson, Off. Ass.: Hardman, Old Broad Street. Nov. 26.
- Butterworth, James, Heyrod Mill, Ashton-under-Lyne, Cotton Spinner. Abbott & Co., Charlotte Street, Bedford Square: Messrs. Bennett, Manchester. Nov. 26.
- Bishop, Samuel Hutton Townsend, Upper Ground Street, Blackfriars, Surrey, and of Blackheath, Kent, Iron Merchant. Clark, Off. Ass.: Hutchinson, Crown Court, Threadneedle St. Nov. 29.
- Barker, William Thomas, Birmingham, Plater. Palmer & Co., or Arnold & Co., Birmingham: Austen & Co., Gray's Inn. Dec. 29.
- Booth, Edward, Birmingham, Victualler. Chilton & Co., Chancery Lane: Suckling, Birmingham. Dec. 3.
- Bolton, George Theodore, Manchester, Wine and Spirit Merchant. Foster, Manchester: Lake & Co., Basinghall Street. Dec. 3.
- Bagnall, Sampson, Cheadle, Stafford, Grocer and Ironmonger. Gough, East Street, Red Lion Square: Blagg, Cheadle. Dec. 3.
- Broadhead, Joshua, Muslin Hall, Wooldale, Kirkburton, York, Clothier. Messrs. Stephenson, Holmfirth, near Huddersfield: Battye & Co., Chancery Lane. Dec. 3.
- \*Booth, Edward, Birmingham, Victualler. Chilton & Co., Chancery Lane: Suckling, Birmingham. Dec. 3.
- Bridger, William, Uxbridge, Middlesex, Draper.

\* Twice inserted.

- Johnson, Off. Ass. : Sole, Aldermanbury.** Dec. 6.
- Broster, Richard, Bermondsey, Surrey, Victualler.** *Green, Off. Ass. : Fisher & Co., Aldersgate Street.* Dec. 6.
- Brown, John, and Thomas Bruton Powell, Stubbins, within Tottington, Lancaster, Calico Printers.** *Hampson, Manchester : Adlington & Co., Bedford Row.* Dec. 6.
- Buxton, James, John Buxton, and Thomas Buxton, Leaven Greave Mill, near Rochdale, Lancaster, Cotton Spinners.** *Emmett & Co., Bloomsbury Square : Messrs. Alexander, Halifax.* Dec. 10.
- Bell, Thomas, jun., Newcastle-upon-Tyne, Cheese and Bacon Factor.** *Gibson, Newcastle-upon-Tyne : Swain & Co., Old Jewry.* Dec. 17.
- Butler, James Phillips, Cheltenham, Gloucester, Wine and Spirit Merchant.** *Gyde, Cheltenham : Blower & Co., Lincoln's Inn Fields.* Nov. 29.
- Bullock, William, Newcastle-under-Lyme, Stafford, Ironmonger.** *Harding, Newcastle-under-Lyme ; Wilson, Symond's Inn, Chancery Lane.* Dec. 13.
- Burwood, Henry Bell, Lowestoft, Suffolk, Fish Merchant and Boat Builder.** *Taylor & Co., Bedford Row : Hickling, Lowestoft.* Dec. 17.
- Bevan, John Scudamore, Bristol, Confectioner, and Starch and Blue Manufacturer.** *Hicks & Co., Bartlett's Buildings, Holborn : Hinton, Bristol.* Dec. 20.
- Butterworth, Jaines, and John Readeyoff, Heyrod Mills, Ashton-under-Lyne, Lancaster, Cotton Spinners.** *Chester, Staple Inn : Tindall & Co., Manchester.* Dec. 10.
- Byrom, Henry, jun., Leamington, Warwick, Banker and Scrivener.** *Fairclough & Co., Liverpool : Wilkins & Co., Warwick ; Adlington & Co., Bedford Row.* Dec. 20.
- Carson, Jacques Alphonse, and Julia Frederica Finck, New Bond Street, Dress Makers and Milliners.** *Clark, Off. Ass. ; Mardon, Newgate Street.* Dec. 3.
- Court, James Grey, Glastonbury, Somerset, and John Grey Court, of Oak-hill, Somerset, Dealers in Cattle.** *Frampton, South Square, Gray's Inn : Miller, Frome Selwood.* Dec. 13.
- Carven, Edward Nantwich, Chester, Banker.** *Johnson & Co., Temple : Broadhurst, Nantwich.* Dec. 13.
- Dalton, Samuel, High Street, Aldgate, London, Straw Bonnet Maker.** *Abbott, Off. Ass. : Batho, America Square.* Nov. 26.
- Dadley, John, Redcliff Crescent, Bedminster, Bristol, Builder.** *Stevens, Gray's Inn Square : Perkins, Bristol.* Nov. 29.
- Dickins, John, jun., of Bourn, Lincoln, Grocer and Draper.** *Allen & Co., Carlisle Street, Soho : Wilders, Bourn.* Dec. 10.
- Ellis, Amos, Mexborough, York, Grocer and Draper.** *Wiglesworth & Co., Gray's Inn : Nicholson & Co., Wath, near Rotherham, York.* Dec. 20.
- Elliott, John, Northampton, Builder.** *Vincent & Co., Temple : Cooke, Northampton.* Nov. 29.
- Elsworth, John, Pudsey, Calverley, York, Cloth Maker.** *Butterfield, Gray's Inn Square : Lister, Cleckheaton, near Leeds.* Dec. 13.
- Evans, Catherine, Llanidloes, Montgomery, Inn Keeper.** *Bigg & Co., Southampton Buildings, Chancery Lane : Marsh or Hayward, Llanidloes.* Dec. 17.
- Ewan, James, Atkinson, Fishergate, Preston, Lan-**caster, Linen Draper and Silk Mercer. *Pearson, Kirkby Lonsdale, Westmorland : Holme & Co., New Inn.* Dec. 17.
- Franklin, Abraham Lewis, Liverpool, Lancaster, Bullion Merchant.** *Vincent & Co., Temple : Littledale & Co., Liverpool.* Nov. 26.
- Flint, Ebenezer, Ludgate Hill, Hosier.** *Belcher, Off. Ass. : Hardwicke & Co., Cateaton Street.* Dec. 10.
- Groombridge, John, Abbey Street, Bermondsey, Surrey, Victualler.** *Edwards, Off. Ass. : Hoppe, Sun Court, Cornhill.* Nov. 26.
- Gowar, Samuel, Regent Street, Pall Mall, Print Seller.** *Lackson, Off. Ass. : Jenkinson, Walbrook.* Nov. 29.
- Gallaway, Alexander, jun., Holloway, Middlesex, Chemist.** *Green, Off. Ass. : Cattams & Co., Mark Lane.* Nov. 29.
- Gregory, Peter, Downall Green, near Ashton-in-the-Willows, Lancaster, Cotton Spinner and Manufacturer.** *Makinson & Co., Temple : Atkinson & Co., Manchester.* Dec. 29.
- Glasgow, David, Birmingham, Engineer and Millwright.** *Richards & Co., Lincoln's Inn Fields.* Dec. 3.
- Greenwood, Walter, Rochdale, Lancaster, Innkeeper.** *Clarke & Co., Lincoln's Inn Fields : Whitehead, Rochdale.* Nov. 26.
- Gowar, Raydin George, Church Row, Aldgate, Coach Maker.** *Graham, Off. Ass. : Fry & Co., Cheapside.* Dec. 13.
- Gates, Richard, Steyning, Sussex, Wine Merchant.** *Sawyer, Bow Lane.* Dec. 17.
- Gough, John, Newcut, Gloucester, Victualler.** *Washbourn, Gloucester : Nicholls & Son, Cook's Court, Lincoln's Inn.* Dec. 20.
- Howard, Apelles, Portwood, Stockport, Chester, Cotton Spinner.** *Hampson, Manchester : Adlington & Co., Bedford Row.* Dec. 20.
- Hart, Martin, Northwich, Chester, Mercer and Draper.** *Messrs. Baxter, Lincoln's Inn Fields : Sale & Co., Manchester.* Nov. 26.
- Hastings, Thomas, Birmingham, Brace Manufacturer.** *Chaplin, Gray's Inn Square : Harrison, Birmingham.* Nov. 26.
- Heardman, Robert, Manchester, Wine and Spirit Merchant.** *Cooper, Manchester : Adlington & Co., Bedford Row.* Nov. 29.
- Harding, Jonathan, Myddleton Street, Clerkenwell, Jeweller, and Dealer in Precious Stones.** *Pennell, Off. Ass. : Garry, Chancery Lane.* Dec. 3.
- Humphrys, Edward, High Street, Lambeth, Surrey, Engineer.** *Alsager, Off. Ass. : Cranch & Co., London Street.* Dec. 6.
- Hunt, Reuben, Sandling Mills, near Maidstone, Kent, and of Sbiplake, Oxford, Paper Manufacturer.** *Edwards, Off. Ass. : Cranch & Co., London Street.* Dec. 6.
- Humphrys, David, High Street, Lambeth, Surrey, Engineer.** *Alsager, Off. Ass. : Seymott & Co., Great Surrey Street, Blackfriars Road.* Dec. 10.
- Hall, Joseph Whitehead, Diggle, within Saddleworth, York, Paper Manufacturer.** *Richards & Co., Lincoln's Inn Fields : Higginbottom, Buckley and Lord, Ashton-under-Lyne.* Dec. 10.
- Hughes, Edward, Llandderfel, Merioneth, Linen and Woollen Draper, Grocer and Shopkeeper.** *Roberts, Chester : Chester, Staple Inn.* Dec. 10.
- Hart, William, late of Manchester, then of London, then of Preston, Lancaster, then of Bangor, North Wales, then of Chester, Banker and Money Scrivener.** *Sharp, Staple Inn :*

- Easterby**, Preston : *Rowley & Co.*, Manchester. Dec. 13.
- Hodgson**, Daniel, and **Jonathan Wright**, of Glossop, Derby, Cotton Spinners and Manufacturers. *Wilson*, South Square, Gray's Inn : *Wilson*, Manchester. Dec. 13.
- Hart**, Charles, and **Thomas Lewellin**, Newgate Street, London, Woollen Warehousemen. *Gibson*, Off. Ass. : *Turner & Co.*, Basing Lane. Dec. 17.
- Hodson**, Edwin, Birmingham, Linen Draper. *Clarke & Co.*, Lincoln's Inn Fields : *Colmore & Co.*, Birmingham. Dec. 17.
- Higginbotham**, Joseph and **Thomas Higginbotham**, Manchester, Wine and Spirit Merchants and Silk Merchants. *Key & Co.*, Manchester. Dec. 3.
- Isaacson**, Stephen, Stoke Newington, Middlesex, Bookseller. *Abbott*, Off. Ass. : *Baker & Co.*, Bucklersbury. Dec. 17.
- Jones**, John, Earl's Court, Old Brompton, Middlesex, Brewer. *Johnson*, Off. Ass. : *Holme & Co.*, New Inn. Dec. 20.
- John**, Benjamin, Narberth, Pembroke, General Shopkeeper. *Owen*, Narberth. Nov. 26.
- Jones**, John, Maddox Street, Regent Street, Tailor. *Abbott*, Off. Ass. : *Oldknow*, Cursitor Street, Chancery Lane. Dec. 3.
- Jenkins**, James Gidion, Sidmouth, Devon, Scrivener : *Clipperton*, Bedford Row : *Bruton*, Exeter. Dec. 3.
- Jones**, William, Oxford, Shoeing Smith. *Dudley & Co.*, Oxford : *Robinson & Co.*, Charterhouse Square. Dec. 6.
- Jones**, Sarah, Ardwick, Manchester, and **John Jones of Ancoats**, Manchester, Machine Makers. *Holme & Co.*, Temple : *Worthington & Co.*, Manchester. Dec. 10.
- James**, Joseph Losh, Durham, Bookseller and Stationer. *Freeman & Co.*, Coleman Street. Dec. 10.
- Jones**, John, Liverpool, and of Llandulas, Denbigh, Lime Stone Dealer and General Dealer. *Vincens & Co.*, Temple : *Littledale & Co.*, Liverpool : *Grecott*, Liverpool. Dec. 13.
- Kirby**, Henry, Birmingham, Railway Contractor. *Chaplin*, Gray's Inn : *Stubbs & Co.*, Birmingham. Nov. 26.
- Knowles**, Samuel, Moolham, near Ilminster, Somerset, Silk Throwster. *Edwards*, Off. Ass. : *Crowder & Co.*, Mansion-House Place. Nov. 29.
- Luxford**, William, Trosley, Kent, Butcher. *Green*, Off. Ass. : *Haslam & Co.*, Copthall Court. Nov. 29.
- Lloyd**, Hugh, Machynlleth, Montgomery, Surgeon and Apothecary. *Holme & Co.*, New Inn : *Perry & Co.*, Aberystwith. Nov. 29.
- Llewellyn**, John William, Cowcross Street, West Smithfield, Ironfounder. *Clark*, Off. Ass. : *Williams*, Alfred Place, Bedford Square. Dec. 13.
- Lawford**, Thomas Bothell, Fenchurch Street, London, Wine Merchant. *Groom*, Off. Ass. : *Borradaile*, King's Arms Yard, Coleman Street. Dec. 17.
- Morgan**, Jonathan Bunce, Southampton Row, Bloomsbury, Laceman. *Groom*, Off. Ass. : *Ashurst & Co.*, Cheapside. Nov. 26.
- Marshall**, John, Colchester Street, Whitechapel, Boiler Maker. *Gibson & Co.*, Off. Ass. : *Alban & Co.*, Stone Buildings. Nov. 29.
- Moseley**, Thomas Robert, Pyes Mill, near Haslegrove, Chester, Cotton Spinners. *Walmsley & Co.*, Chancery Lane ; *Humphrys & Co.*, Manchester. Nov. 29.
- Matthew**, John Clark, lately of Croydon, Surrey, Grocer ; and since of the same place, Corn Merchant. *Belcher*, Off. Ass. : *Heathcote & Co.*, Coleman Street. Dec. 3.
- Merchant**, John Lewis, High Holborn, Oilman, Wax and Tallow Chandler. *Gibson*, Off. Ass. : *Shearman*, Gray's Inn Square. Dec. 3.
- Meads**, Moses, and **John Meads**, Woodborough, Nottingham, Hosiers and Bakers. *Yallop*, Basinghall Street : *Parsons & Co.*, Nottingham. Dec. 10.
- M'Clellan**, William, Newcastle-upon-Tyne, Innkeeper. *Meggison & Co.*, King's Road, Bedford Row : *Stanton*, Newcastle-upon-Tyne. Dec. 17.
- Maddison**, George, Reedham, Norfolk, Merchant. *Palmer*, Great Yarmouth : *Swain & Co.*, Frederick's Place, Old Jewry. Dec. 17.
- Moores**, James, Witton, near Northwich, Chester, Shopkeeper. *Taylor & Co.*, Bedford Row : *Fitchett & Co.*, Warrington. Dec. 20.
- Nicholson**, Joseph Carruthers, Liverpool, Merchant and Ship Owner. *Duncan & Co.*, Liverpool : *Adlington & Co.*, Bedford Row. Nov. 26.
- Nicklin**, John Banks, Wolverhampton, Stafford, Ironmonger. *Clowes & Co.*, Temple : *Collis*, Stourbridge. Nov. 26.
- Nicholl**, Thomas, jun. Redruth, Cornwall, Grocer. *Adlington & Co.*, Bedford Row : *Paul & Co.*, Truro. Nov. 26.
- Oldham**, Charles, Newton Green, Mottram in Lougendale, Chester, Innkeeper. *Clarke & Co.*, Lincoln's Inn Fields : *Higginbottom & Co.*, Ashton-under-Lyne. Dec. 17.
- Partridge**, James Birch, Birmingham, Dealer in Birmingham and Sheffield Wares. *Chaplin*, Gray's Inn Square : *Harrison*, Birmingham. Nov. 26.
- Perry**, William Batt, Croyden, Surrey, Linen Draper. *Groom*, Off. Ass. : *Messrs. Jones*, Size Lane. Nov. 29.
- Parsons**, George, Worthing, Sussex, Wine Merchant. *Dempster*, Brighton : *Blake & Co.*, Bedford Row. Dec. 29.
- Pickering**, Richard, Birmingham, Victualler. *Chaplin*, Gray's Inn Square : *Harrison*, Birmingham. Dec. 10.
- Robertshaw**, James, and **John Rutherford**, Oxford Street, Hosiers. *Belcher*, Off. Ass. : *Jones & Co.*, Size Lane. Nov. 26.
- Ram**, John, Queen's Buildings, Brompton, Upholsterer. *Clark*, Off. Ass. : *Harris*, Argyle Street, Regent Street. Nov. 29.
- Ryding**, John, West-Bromwich, Stafford, Iron-founder. *Chaplin*, Gray's Inn Square : *Richards & Co.*, Birmingham. Nov. 29.
- Roberts**, Phylbert, Exeter, Broker. *Clipperton*, Bedford Row : *Bruton*, Exeter. Nov. 29.
- Rabett**, Alfred, and **Samuel Fuller**, Gutter Lane, Cheapside, London, Warehousemen. *Lackington*, Off. Ass. : *Dickson*, Bucklersbury. Dec. 6.
- Ryall**, Henry Thomas, formerly of Euston Square, now of York Street, Portman Square, Engraver and Printseller. *Clark*, Off. Ass. : *Meredith*, Heathcote Street, Mecklenburgh Square. Dec. 10.
- Ryder**, Benjamin Moxon, Kingston-upon-Hull, Grocer. *Crank & Son*, London Street, Fenchurch Street : *Thorney*, Hull. Dec. 17.
- Richardson**, Jacob, Hyde, Chester, Shopkeeper and Beerseller. *Clarke & Co.*, Lincoln's Inn Fields ; *Higginbottom & Co.*, Ashton-under-Lyne. Dec. 17.

- Robinson, Daniel Sneinton, Nottingham, Coal Dealer. *Fox & Co.*, Nottingham. Dec. 17.
- Saunders, James, Strand, Hotel Keeper. *Lackington*, Off. Ass.: *Pocock & Co.*, Bartholomew Close. Nov. 26.
- Smith, Edward, of Wigmore Street, Cavendish Square, Grocer. *Johnson*, Off. Ass.: *Archibutt*, Sloane Square, Chelsea. Nov. 29.
- Shawcross, William, John Greenhalgh, and John Cross, of Stockport, Chester, Cotton Spinners and Manufacturers. *Willis & Co.*, Tokenhouse Yard: *Mortimer*, Manchester. Nov. 29.
- Simpson, George Thomas, formerly of Lower Road, Islington, now of Curzon Street, May Fair, Surgeon and Apothecary, Chemist and Druggist. *Pennell*, Off. Ass.: *Tribe*, Great Russell Street, Bloomsbury. Dec. 6.
- Simons, Thomas, Exeter, Builder. *Turner*, Exeter: *Turner*, Bedford Row. Dec. 10.
- Saint, James, Haltwhistle, Northumberland, Builder, Draper and Shopkeeper. *Welford*, Hexham. *Foster & Co.*, John Street, Bedford Row. Dec. 10.
- Schofield, George, Limefield, near Bury, Lancaster, Woollen Draper. *Appleby & Co.*, Bedford Row; *Grundy*, Bury. Dec. 17.
- Thomas, Thomas Phipps, Cheltenham, Gloucester, Plumber, Glazier, and Builder. *Meredith & Co.*, Lincoln's Inn; *Dix*, Bristol; *Winterbotham*, Cheltenham. Dec. 20.
- Spencer, John, Winlaton, Durham, Tailor and Draper. *Nicholls & Co.*, Cook's Court, Lincoln's Inn: *Kent*, Newcastle-upon-Tyne. Dec. 6.
- Saunders, Elizabeth, Chesham, Bucks, Grocer and Ironmonger. *Gibson*, Off. Ass.: *Mason*, Little Friday Street. Dec. 10.
- Thompson, William Christian, Liverpool, Attorney at Law, Land Agent, and Commission Agent. *Vincent & Co.*, Temple: *Littledale & Co.*, Liverpool. Nov. 26.
- Thompson, Benjamin, Great Yarmouth, Norfolk, Steam Packet Proprietor. *Holt*, Great Yarmouth: *Swain & Co.*, Frederick's Place, Old Jewry. Nov. 26.
- Taylor, William, and John Taylor, Macclesfield, Chester, Silk Manufacturers. *Lowe & Co.*, Southampton Buildings, Chancery Lane: *Brocklehurst & Co.*, Macclesfield. Dec. 3.
- Trent, Henry, and Edwin Ward Trent, Old Ford, near Bow, Middlesex, Rope Makers. *Graham*, Off. Ass.: *Church*, Solicitor, [no residence guaranteed]. Dec. 6.
- Triance, William, King's Lynn, Norfolk, Builder. *Pitcher*, King's Lynn: *Clowes & Co.*, Temple. Dec. 13.
- Thornton, John, Bradford, York, Woolstapler. *Hawkins & Co.*, New Boswell Court: *Wells*, Bradford. Dec. 17.
- Tulk, Augustus Henry, and Edward Banks, Gateshead, Durham, Soap and Alkali Manufacturers. *Shaw*, Ely Place, Holborn: *Walters*, Newcastle-upon-Tyne. Dec. 17.
- Thompson, John, Liverpool, Grocer: *Adlington & Co.*, Bedford Row: *Payne*, Liverpool. Dec. 17.
- Walker, Elizabeth, Market Rasen, Lincoln, Feltmonger. *Dynley & Co.*, Field Court, Gray's Inn: *Rhodes*, Market Rasen. Nov. 26.
- Watson, Charles, Braintree, Essex, Carpenter and Builder. *Messrs. Daniell*, Colchester: *Powell, Martin's Lane*, Cannon Street, London. Nov. 26.
- Waddell, James, Lime Street, and Leadenhall Street, London, Ship and Insurance Broker, and Ship Owner. *Pennell*, Off. Ass.: *Jordens & Co.*, High Street, Southwark. Nov. 29.
- Wilkins, William, Crown Street, Soho, Tallow Chandler. *Graham*, Off. Ass.: *Tribe*, Russell Street, Bloomsbury. Nov. 29.
- Wilson, William Henry, Eton, Buckingham, Tavern Keeper. *Graham*, Off. Ass.; *Goddard*, Wood Street, Cheapside. Nov. 29.
- Webster, Christopher, sen., Hulme, Manchester, Banker. *Makinson & Co.*, Temple: *Atkinson & Co.*, Manchester. Dec. 10.
- Weakley, Robert, Devonport, Devon, Hotel Keeper and Tavern Keeper. *Sole*, Aldermanbury: *Sole*, Devonport. Dec. 10.
- Wilkins, William, and Joseph Wilkins, Illey, Oxford, Timber Merchants. *Hester*, Oxford: *Messrs. Baxter*, Lincoln's Inn Fields. Dec. 13.
- Wilks, Thomas, Walsall, Stafford, Tailor and Draper. *Smith*, Chancery Lane: *Hill*, Birmingham. Dec. 13.
- Whiteley, Jonas, Halifax, York, Machine Maker. *Emmett & Co.*, Bloomsbury Square: *Alexander & Co.*, Halifax: or *Stocks & Co.*, Halifax. Dec. 3.
- Waller, Thomas, Samuel Waller, Thomas Waller the younger, and Ralph Knowles Waller, Manchester, Cotton Spinners and Manufacturers. *Adlington & Co.*, Bedford Row: *Claye & Co.*, Manchester. Dec. 3.
- Wilson, Thomas, and William Wilson, Liverpool, Merchants and Clothiers. *Adlington & Co.*, Bedford Row: *Clay & Co.*, Liverpool. Dec. 6.
- Woodcock, William, Deal, Kent, Straw Hat Manufacturer. *Parker*, St. Paul's Church Yard. Dec. 17.
- Westall, Richard Purkis, and William Westall, Birmingham, Drapers and Warehousemen. *Reed & Co.*, Cheapside: *Griffiths & Co.*, Birmingham. Dec. 17.
- Wells, George Stansfeld, Rippenden, Soyland, Halifax, York, Cotton Spinner and Manufacturer. *Hawkins & Co.*, New Boswell Court: *Howard & Co.*, Rippenden. Dec. 20.
- Yates, William, Manchester, Commission Agent, Cotton Spinner and Manufacturer by power. *Adlington & Co.*, Bedford Row: *Morris*, Manchester. Nov. 26.
- Yeld, George Collett, Market Street, Edgware Road, Iron Merchants. *Green*, Off. Ass.: *Freeman & Co.*, Coleman Street. Dec. 13.

### PRICES OF STOCKS.

Saturday, 21st December, 1839.

Bank Stock, div. 7 per Cent.	- - - - -	177½
3 per Cent. Reduced Annuities,	- - - - -	90½ a £
3½ per Cent. Reduced	- - - - -	98½ a £
Long Annuities, expire 5th Jan. 1860	- -	13½ a £
Ditto for 30 yrs., exp. 10th Oct. 1859	- -	13½ a £
India Bonds, 3 per Cent.	- - - - -	9s. a £
Exchequer Bills, 2d. 1½ d.	1000l.	- - - 5s. a £
Ditto.	Ditto.	500l. - - - 5s. a £
Ditto.	Ditto.	Small, - - 5s. a £
3 per Cent. Cons. for Open. Jan. 16	- - -	92 a £

# The Legal Observer.

SATURDAY, DECEMBER 28, 1839.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## SOME ACCOUNT OF THE GRAND LEGAL TOURNAMENT.

We are happy that we are able, during this present joyful season, to present to our readers some account of an occurrence which we trust may form a pleasing variety to the usual contents of our number. Nothing can exceed our love and veneration for the law, whether in its most extended principles or its minutest details. We hallow the very dust which slumbers on the legal folio. We have an affection for the smokey atmosphere of the Inns of Court; it has been the breath of life to sage after sage, and “if we have it not” (except during the long vacation) “we die.” We stand or fall by our profession: it is our mistress: we can see no defects in it; and what may be blemishes to others are beauties to us. We love it in all its branches; in all its ramifications. Judges and barristers,—attorneys and solicitors,—town and country,—student's and articled clerks,—copying clerks, and barristers' clerks,—we have “stomach for them all;” we have a heart for the whole race; and a hand, such as it is, to defend their smallest privilegea. We are fond of all professional customs and habits, and we regret that many of them are becoming old-fashioned. Of the grand legal revels formerly celebrated in the Halls of the Inns of Court about this season of the year—

“ When my Lord Keeper led the brawls,  
And seals and maces danced before him”—

Of these we have already given a full account, and we are sorry that we are not able to say a word as to their revival. Still, however, we are happy to think that all love of antiquity is not quite extinct among us, as we are now about to prove, by giving a brief but a true and correct account of what will, we are sure, be considered an interesting professional event.

Our readers are already well aware of the claims which have recently been put forward by the learned body of Serjeants to the monopoly of the Court of Common Pleas, and that this matter was left pending at the close of

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last Michaelmas Term, the Judges of that Court having expressed their willingness to hear the other side of the question fully argued in the ensuing Hilary Term. Under these circumstances, much discussion has taken place in the interval as to the best mode of settling the matter finally and satisfactorily. The great difficulties attending the question, the peculiar delicacy of the case, and its importance, both to the profession and the public, have led the parties concerned to the conclusion that a mere legal argument is not the right mode of deciding it, and it was determined that “the trial by battel” was, on the whole, the most satisfactory mode that could be resorted to; and however startling this announcement may at first appear, when it is remembered that this mode of trial has been only recently abolished, and was peculiar to the Court of Common Pleas, it will be allowed at once that it is not very surprising that recourse should have been had to it.

This having been resolved on, the next point was to devise the best mode of carrying the resolution into effect. The trial by battel was a species of duel which only admitted of two champions—one on either side—and this, although not without its advantages, was also open to many objections. It was resolved, therefore, that the matter would be more fairly decided by means of a tournament, in which five champions should be selected from among the Serjeants, and five others from among the Queen's Counsel of the Common Law Bar, most affected by the reclosing of the Common Pleas, and that public lists should be opened, and that a joust or passage at arms should take place. This, it was thought, would, on the whole, be the fairest way of settling the question, and would, moreover, be more in accordance with the spirit of the times, tournaments being just now quite the fashion.

No sooner was this resolved on than the parties looked about for a piece of ground suitable for their purpose; and, after some deliberation, the vacant space in the middle of Lincoln's Inn Fields was selected as the most

desirable, being adjacent to the chambers of the several champions, and, as it was suggested by one of the Judges, close to Surgeon's Hall, in case of any bruised heads or broken limbs. Leave from the proper authorities having been obtained, lists were soon erected on the model described by Mr. Justice Blackstone.<sup>b</sup> To the honour of the profession let it be said, that there was no lack of persons on either side ready and willing to stand forward as the selected champions, and to labour hard to become expert in the necessary martial exercises. They all, however, without exception, declined to take the part of the *dummy knight*. The names of the selected champions were, for the Serjeants—The Solicitor General; Serjeant Spankie, Q. S.; Serjeant Boimpas, S. L.; Serjeant Goulburn, S. L.; and Serjeant Talfourd, S. L. On the other side—The Attorney General; Mr. Thesiger, Q. C.; Mr. Erle, Q. C.; Mr. Kelly, Q. C.; and Mr. Jervis, Q. C.

The appointed day having arrived, the rules laid down by the books, and recapitulated by the great commentator, were strictly pursued. On one side of the lists a Court was erected for the Judges of the Court of Common Pleas, who attended in their scarlet robes, and a bar was prepared for the learned Serjeants at Law and Queen's Counsel, not selected as champions. The Court sat at sun-rising, at least as soon as it was considered by the light that the sun had risen; as during the last two months it has hardly been seen at all. Proclamation was then made for the parties, and their champions, who were introduced by two knights, namely, Sir F. Palgrave and Sir H. Nicolas, both skilled in legal antiquities. The champions were dressed in a coat of armour, with red sandals, bare legged from the knee downwards, bareheaded, and with bare arms to the elbows.<sup>c</sup> Some doubt arose as to what weapons should be used,<sup>d</sup> but after much discussion it was determined by the Judges that each champion should be furnished with a lance and shield, but no sword. Thus armed, these great and mighty knights took every man his adversary by the hand, and made the prescribed oath against sorcery and enchantment, in the following form:—"Hear this, ye justices, that I have this day neither eat, drank, nor have upon me neither bone, stone, ne grass, nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abated, or the law of the devil exalted." Each party then retired to the end of the lists, where their faithful squires attended with their chargers. They then put on their helmets, mounted, and waited for the word of onslaught. The lists were kept by a select party of javelin men, and the heralds now had the trumpets, who were brought special from the Northern Circuit, to sound a charge, having first gone the round crying the usual cry, "*largesse, largesse,*" (a strictly legal expression) which was hand-

somely responded to. The knights now put lances in rest, dashed their spurs into their fiery steeds, and started at full speed, meeting midway in the lists. The war cry on the one side being "A Campbell, a Campbell," on the other, "A Wilde! a Wilde!" The champions were thus paired:—The Attorney General encountered Serjeant Spankie, each wearing on their helmet and shields, the thistle, emblematic of their country. Mr. Thesiger boldly opposed the Solicitor General; Serjeant Boimpas singled out Mr. Erle as his temporary foe; Serjeant Talfourd confronted Mr. Kelly, while Serjeant Goulburn, who appeared in a fine suit of blue armour, and appeared quite at home in the lists, breathed defiance against Mr. Jervis, who, however, quailed not under his looks. On the first course, so equally matched were the champions, that no positive advantage could be said to be gained by either side. The plume of Mr. Kelly was carried away, and Serjeant Boimpas's helmet was unlaced by the force of the shock; but on the second course a decided advantage appeared in favour of the Queen's Counsel. The Attorney General, with great dexterity, while in full career, altered the posture of his lance; and instead of charging at Serjeant Spankie's shield, attempted the more difficult point of his helmet. He was completely successful—the Serjeant was unhorsed, and was carried out of the lists. Equally fortunate was Mr. Erle, who fairly lifted Serjeant Boimpas from his saddle. Nevertheless he fell on his feet, and would have renewed the fight. The marshals, however, interfered, and adjudged him conquered. The contest between Serjeant Goulburn and Mr. Jervis was more equal; the activity displayed by the latter being a counterpoise for the heavier metal of the former. In the charge neither was unhorsed, but Mr. Jervis losing his stirrup by the force of the recoil, and his horse swerving at the time, was so closely pressed by the blue knight, that he lost his lance and was thus required by the marshals to give in. In the other two encounters, those between the Solicitor-General and Mr. Thesiger, Serjeant Talfourd and Mr. Kelly, no advantage was gained by either side on the second course.

The trumpets now sounded for the third charge, when, leaving the combat with his former antagonist undecided, and finding the leader of the adverse host without any opponent, the Solicitor-General with the utmost boldness rode full charge against the Attorney-General.—On seeing this, the other combatants withdrew on either side, willing, apparently, to allow this combat to decide the fate of the day, as they naturally looked up to their leaders as the most renowned champion of their side. All eyes were soon directed to them, and the interest of the spectators became intense. The Attorney-General, however, did not immediately perceive the intention of the Solicitor, and from this circumstance was not prepared for his full career. The consequence was that he was unhorsed, and the heralds proclaimed the Solicitor-General the victor of the day.

At this moment, however, a trumpet was

<sup>b</sup> See the description at length, 3 Com. p. 339.

<sup>c</sup> 3 Bla. Com. 339.

<sup>d</sup> Ib.

heard at a distance, and an unknown knight, clothed from head to foot in black armour, with his visor down, entered the lists, and signified to the heralds his desire to engage the successful champion. He declined to give his name, but entered himself in the books of the heralds simply as *Desdichado*—the disinherited knight bearing on his shield as a device, what seemed a tree, brush, or besom plucked up by the roots. The Solicitor-General, although not in strictness bound to accept this new challenge, declined to avail himself of this excuse, and bade the black knight to come on and do his best. That doughty warrior, evidently one accustomed to battle, of lofty stature and sinewy frame, applied himself with vigour to the contest. The trumpets again sounded a charge, and both knights rushed like lightning to the centre of the lists, but wearied with his several contests, the Solicitor-General was no fit opponent to the disinherited knight, and he was unhorsed, though not with discredit. The black knight thereupon calling for a bowl of wine, and gracefully lowering his lance to the judges, opened the lower part of his visor, and drank "No MONOPOLY," then closing his visor, rode out of the lists unattended, nor is it known to this day who he is.

The result of this famous passage of arms is to leave matters pretty much as they were; the judges being of opinion, that although the Solicitor-General might have declined the challenge of the unknown knight, yet having accepted it, and having been unhorsed, he cannot be deemed the victor of the day. The consequence will be, as far as we can learn, that the question must still be decided by the Court of Common Pleas.

was annulled, in consequence of an agreement between the bankrupt and his creditors, the latter consenting to receive a composition of ten shillings in the pound, I am of opinion that such an agreement between the bankrupt and his creditors cannot affect the rights of other persons who are not parties to the arrangement, the bankrupt not being positive that the issuing of a commission shall ensure as a complete discharge of the indentures whereby an apprentice is bound to a bankrupt. This is not a case in which I can order a reference to settle the compensation to be paid by the master of the apprentice; for under the circumstances, I am at a loss to know what compensation he could be entitled to. I think, however, that he should have the costs of the application." *Allen v. Coster*, 1 Bea. 274.

## CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

### No. XIX.

#### HIGHWAY RATES.

2 & 3 Vict., c. 81.

*An Act to authorize for one year, and from thence to the end of the then next session of Parliament, the application of a portion of the Highway Rates to Turnpike Roads in certain cases.* [24th August 1839.]

1. 5 & 6 W. 4, c. 50. *Justices to inquire at special sessions for highways into the revenues and condition of the repairs of turnpike roads, and if necessary, to apportion a part of the highway rate to the trustees of any turnpike road.*—Whereas an act was passed in the fifth and sixth years of his late Majesty, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," whereby divers statutes passed in the reign of his late Majesty King George the third, relating to the performance of statute duty, were repealed, and statute duty was thereby altogether abolished: And whereas the revenues of some turnpike roads are so unequal to the charge and maintenance of such roads, after paying the interest and principal of the sums due upon mortgage of the tolls thereof, when deprived of the aid heretofore derived from statute duty, that it is necessary that some additional provision be made for such roads for a limited period: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the justices at any special sessions for the highways holden after the passing of this act, upon information exhibited before them by the clerk or treasurer of any turnpike trust that the funds of the said trust are wholly insufficient for the repair of the turnpike road within any parish, (notice in writing of such intended information having been previously

## PRACTICAL POINTS OF GENERAL INTEREST.

### APPRENTICE.

THE following case decides a new point, as we believe.

A fiat of bankruptcy issued against the master of an apprentice, but was afterwards annulled, by means of a composition between the bankrupt and his creditors; and it was held that the indentures of apprenticeship were discharged. The Master of the Rolls said: "I must order the indentures to be delivered up to the guardian. It is not necessary for me to decide whether any indentures of apprenticeship could, under the circumstances in this case, be sustained, for I am of opinion, that if the indentures of apprenticeship were originally valid, they became annulled by the issuing of the fiat in bankruptcy. I do not say, that in every case where a fiat is afterwards annulled, the indentures of apprenticeship remain invalid, for I can conceive many cases in which the fiat may have been improperly taken out, and afterwards annulled, and in such a case, the Court would put the parties in the same situation as they were in before the issuing of the fiat. Here the fiat

given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions,) to examine the state of the revenues and debts of such turnpike trust, and to inquire into the state and condition of the repairs of the roads within the same, and also to ascertain the length of the roads including turnpike roads within such parish, and how much of such road is turnpike road; and if after such examination it shall appear to the said justices necessary or expedient for the purposes of any turnpike road so to do, then to adjudge and order what portion (if any) of the rate or assessment levied or to be levied by virtue of the said recited act shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officer appointed by them in that behalf; such money to be wholly laid out in the actual repair of such part of such turnpike road as lies within the parish from which it was received.

*2. If surveyor refuse to pay over rate or assessment, the same to be levied on his goods and chattels.*—And be it enacted, that if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by the said recited act authorised to be levied.

*4. Power of appeal.*—Provided always, and be it enacted, that if any person shall think himself aggrieved by any order, judgment, or determination made, or by any matter or thing done by any justices of the peace at any special sessions in pursuance of this act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, division or place wherein the cause of such complaint shall arise, such appellant first giving to such justices ten days notice in writing of such appeal, together with a statement in writing of the grounds of such appeal, within six days after such order, judgment, or determination shall be so made or given as aforesaid, who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively touching the matter of such appeal to the said justices at their general or quarter sessions aforesaid; and that in case of such appeal the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited act; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form:

Provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination, or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner aforesaid: Provided always, that it shall not be lawful for the appellant to be heard in support of such appeal unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

*5. Limitation of act.*—And be it enacted, that this act shall extend only to England.

*6. Act may be amended.*—And be it enacted, that this act may be amended or repealed by any act to be passed during the present session of Parliament.

*7. Term of act.*—And be it enacted, that this act shall continue and be in force for one year from the passing hereof, and from thence until the end of the then next session of Parliament.

### EXAMINATION OF APPLICANTS FOR ADMISSION AS SOLICITORS IN CHANCERY.

The following notices of examination and admission in chancery having been given for next term, it may be useful to extract from the order of the Master of the Rolls, dated the 27th July 1836, the directions relating to the course to be pursued.

That every person who has not previously been admitted an attorney as aforesaid shall, before he be admitted to take the oath required to be taken by persons applying to be admitted as solicitors as aforesaid, undergo an examination touching his fitness and capacity to act as a solicitor of the said Court of Chancery; and that *four of the sworn clerks* of the Court of Chancery, and *twelve solicitors* of the same Court, to be appointed by the Master of the Rolls, on the twenty-eighth day of July in this present year, and on the first day of Easter Term in every succeeding year, shall be examiners for the purpose of examining and inquiring touching the fitness and capacity of every such applicant for admission as a solicitor; and that any five of the said examiners (one whereof to be one of such sworn clerks) shall be competent to conduct the examination of such applicant; and that *one of the masters* in ordinary of the said Court of Chancery shall be present and preside at the said examination, and shall, or shall not, take part in the said examination, as he shall in his discretion think fit; and that, if the said examiners, or the ma-

\* Referring to the Superior Courts of Common Law.

ior part of them, shall be satisfied of the fitness and capacity of the applicant to act as a solicitor, then the said examiners, or the major part of the said examiners, shall give him a certificate, under their hands, testifying such fitness and capacity; and the said Master shall sign the said certificate, in testimony of his having been present and presided at the said examination; and such certificate shall be in force until the end of the term next following the date thereof, and no longer, unless the time shall be specially extended by order of the Master of the Rolls.

That the examiners so to be appointed, shall conduct the said examination under regulations to be first submitted to, and approved by the Master of the Rolls.

The regulations comprised in the Master of the Rolls' order of 28th July 1836, contain, among other things, the following directions.

That every person applying to be admitted a solicitor of the High Court of Chancery, pursuant to the said orders, shall, within the first seven days of the term in or us of which he is desirous of being admitted, leave or cause to be left, with the secretary of the *Incorporated Law Society*, at the hall of the said society in Chancery Lane, for the inspection and consideration of the examiners, his articles of clerkship duly stamped, and also any assignment which may have been made thereof, together with answers in writing to the several questions hereunto annexed,<sup>b</sup> signed by the applicant.

That every person applying for admission shall also, if required, sign and leave, or cause to be left, with the secretary of the said society, for the inspection and consideration of the examiners, answers in writing to such other written or printed questions as shall be proposed by the said examiners touching his said *service and conduct*. And moreover that every person applying for admission shall, if required, procure the attorney or attorneys, solicitor or solicitors, with whom he shall have

served his clerkship, as aforesaid, to answer, either personally or in writing, to the questions hereunto annexed, and also to any other questions touching the *service or conduct* of the applicant, unless it shall appear to the satisfaction of the said examiners, or the major part of them, that he is unable to procure the said attorney or attorneys, solicitor or solicitors, to attend or answer any such questions as aforesaid.

That every person so applying shall also attend the said Master and examiners at the *Rolls House*, at such time or times as shall be duly appointed for that purpose, and shall answer such questions as the said examiners shall then and there, in the presence of one of the Masters of the High Court of Chancery, put to him, *by written or printed papers*, touching as well the matters hereinbefore mentioned, as also touching his fitness and capacity to act as a solicitor.

This examination at the *Rolls House* of one or two persons occasions as much trouble (except in the number of answers to be considered) as the examination of one hundred and upwards at the *Law Society*. Besides the four solicitors who must attend with one of the sworn clerks, a master in Chancery is also required to be present. A new set of questions must be prepared, because those which have been used at the common law examination may be communicated by some of the candidates; or if the equity examination took place first, the questions used thereat would be liable to the same objection. We suppose, however, that the candidates have some reason for preferring this mode of entering the profession, however unusual it has now become.

The following are their names and descriptions:

#### PERSONS APPLYING TO BE ADMITTED SOLICITORS OF THE COURT OF CHANCERY,

*On the day after Hilary Term, 1840.*

##### Clerk's Name and Residence.

Henry Cook, Kingston upon Hull.  
Augustus Manning, the younger, 8, Hertford Street, May Fair; and Chalk Hill House, Kingsbury, Middlesex.

##### To whom articled, and Residence.

Thomas Thompson, Kingston-upon-Hull.  
Jonathan Norman Dalston, Hertford Street, May Fair.

<sup>b</sup> These are the same questions as are put at Common Law, varying only the profession of an attorney to that of solicitor.

ON  
THE WANT OF ACCOMMODATION FOR  
ATTORNEYS IN COURTS OF LAW.

*To the Editor of the Legal Observer.*

Sir,

It appears to me most extraordinary, that the Law Society (which I may take to represent one part of their profession) does not endeavour to redress the great inconvenience that arises to attorneys engaged in trials, either at Westminster, Guildhall, or Lincoln's Inn, from the want of tables to write on, in order to take notes, so that they are obliged to put themselves, perhaps for hours, in the awkward posture of writing on their knees, or any other expedient they may hit upon. It is but justice to say, that I believe the Courts of Common Pleas and Exchequer are the only two where there is such accommodation.

There are also other inconveniences, such as the want of secure places to lay papers in, and a room where might be left coats, hats, &c., and where there should be a person to take care of them, and give tickets to persons depositing things in his charge (such as is the practice at some of the public institutions); in fact, a sort of "attorneys' robing room;" and why, I would ask, should not attorneys have the same conveniences as barristers, who have a great deal more responsibility upon them than they.

I trust, that the mention of this (amongst many grievances of our fraternity) in your valuable journal, will soon cause redress.

A CONSTANT READER.

**REASONS FOR THE UNPOPULARITY  
OF ATTORNEYS.**

We have occasionally in the course of our labours called attention to the prejudice which exists against attorneys, and have endeavoured to account for it. Amongst other articles we would refer to one of the 9th March last. We incline to believe that of late years this prejudice has diminished, and certainly there are now few, if any, of those wholesale attacks against the profession as a body, which formerly appeared in the columns of the daily newspapers. We have much pleasure in laying before our readers an extract from Blackwood's Magazine for December, which we observe has been quoted by the Morning Herald, headed "absurd ridicule of attorneys." We invite a learned correspondent who is desirous of tracing the cause of the professional dis-

tem of which he complains to exert his philosophical powers in this matter.

The following is the extract referred to :

" There will probably never be wanting those who will join in abusing and ridiculing attorneys and solicitors. Why? In almost every action at law, or suit in equity, or a proceeding which may or may not lead to one, each client conceives a natural dislike for his opponent's attorney or solicitor.

" If the plaintiff *succeeds*, he hates the defendant's attorney for putting him (the said plaintiff) to so much expence, and causing him so much vexation and danger; and when he comes to settle with his own attorney, there is not a little heart-burning in looking at his bill of costs, however reasonable.

" If the plaintiff *fails*, of course it is through the ignorance and unskilfulness of his attorney or solicitor, and he hates almost equally his own and his opponent's attorney.

" Precisely so is it with a successful or unsuccessful defendant.

" In fact, an attorney or solicitor is almost always obliged to be acting adversely to some one, of whom he at once makes an enemy, for an attorney's weapons must necessarily be pointed almost invariably at our pockets.

" He is necessarily also called into action in cases where all the worst passions of our nature—our hatred and revenge, and our self interest—are set in motion. Consider the mischief that might be constantly done on a grand scale in society, if the vast majority of attorneys and solicitors were not honourable and able men; conceive them for a moment, disposed everywhere to stir up litigation, by availing themselves of their perfect acquaintance with almost all men's circumstances—artfully inflaming irritable and vindictive clients, kindling instead of stifling family dissensions, and fomenting public strife: why, were they to do only a hundredth part of what it is thus in their power to do, our courts of justice would soon be doubled, together with the number of our judges, counsel, and attorneys."

**MODE OF EXAMINING ARTICLED  
CLERKS.**

Sir,

The proper and *satisfactory* method of determining the law upon any point that may arise, is, I conceive, to seek for some acknowledged rule bearing upon it either directly or analogously: or at least for some principle to which it may be referred—and when a case,—although it may never have been decided by a Court, or even have ever before arisen,—is clearly within the grasp of a rule of law, laid down by our text writers, and emanating from a most reasonable principle of jurisprudence, a man, having any idea of our legal system, would feel as perfectly satisfied of its legal

bearing as if the dictum of a judge upon the very point itself were laid before him. Now, what I maintain, is, that having cited the principle, and quoted one of our best writers (I might have quoted many) to the effect that an infant can contract *only* for necessaries, and it being plain, that although an action might be maintained for necessaries (what are necessities is, I apprehend, for a jury to say), yet the cognovit, an instrument which confesses such action, can itself never be properly defined a contract for necessities, so, evidently, not such a contract as an infant can enter into. But, because I do not refer to a case in point, I am told, my answer is unsatisfactory. Some persons there are, certainly, who, ignorant of law as a science, and never caring "*rerum cognoscere causas*" confine their attention to report books, and, as far as their memories will enable them, become a walking dictionary of decided cases, and from habit, can neither comprehend nor understand any thing but what a judge has laid down: such men are, if at all, lawyers in a very narrow sense of the word, and in their minds, "he will become the greatest lawyer who has the strongest legal or artificial memory, though" (I quote Sir William Jones) "if law be a science, and really deserve so sublime a name, it must be founded on principle, and claim an exalted rank in the empire of reason."

A. E. F.

## PRACTICE IN BANKRUPTCY.

We have received a report, of which the following is the substance, from a correspondent on whom we rely, shewing the circumstances in which the Court of Bankruptcy will admit the proof of a debt by the assignee of a deceased creditor without the concurrence of the creditor's executor.

Mr. Egan applied for leave to prove a debt standing in the name of the late Lord Langford. He stated that, when the commission of bankruptcy was issued against Messrs. Chambers and Son, they were indebted to the late Lord Langford on the balance of a banking account. His Lordship subsequently assigned his claim, but the debt remained unproved, and hence arose the necessity for the present application.

Mr. Arnold (counsel for the bankrupt's assignees) said, although there was no disposition on the part of his clients to offer objections, yet they were bound to scrutinize every claim set up against the bankrupt's estate; and he contended that the present application could not be granted, as the executor of the deceased nobleman had not joined with the assignee.

Mr. Egan said, the will left by his lordship was calculated to cause considerable litigation, and that it had not been proved. He, however, maintained that, although an equitable creditor could not take out a commission of bankruptcy, yet an equitable as well as a legal

claim might be proved under a fiat, and cited *Ex parte Williamson*, 2 Ves. sen. 249, and that the assignment was sustainable in equity (*Rollo v. Dawson*, 1 Ves. sen. 332; *Duke of Chandos v. Talbot*, 2 P. Wms. 608; and *Lord Towns-end v. Wyndham*, 2 Ves. p. 6); that there was no case in which an assignment, especially of a *chase in action*, operated otherwise than by putting the assignee in the situation of the assignor (*Purdey v. Jackson*, 1 Russ.); and that the Court possessed an equitable as well as a legal jurisdiction, and consequently, was competent to take cognizance of the claim.

Mr. Commissioner Holroyd said, the constant practice of the Court had been to require the assignor or his legal personal representative to concur with the assignee.

Mr. Egan said, that *Ex parte Lloyd*, 1 Rose, 4, tended to establish a different doctrine. There Lord Eldon said, "The assignee has purchased the right of an individual who was entitled to prove, and is, as such purchaser, entitled to his advantages, remedies, and equities, and therefore to prove in his name."

Mr. Arnold maintained that *Ex parte Lloyd* had been overruled by *Ex parte Herbert*, 2 Glynn & Jamieson, 66.

Mr. Egan replied *Ex parte Herbert* decided a very different point, namely, that "a creditor who had proved his debt, and subsequently assigned it, was entitled to sign the bankrupt's certificate;" the distinction between the two cases was obvious from the language of the Lord Chancellor; "I remember no instance (said his Lordship) where after a creditor had proved, and subsequently assigned his debt, the purchaser had been admitted to sign the certificate." The bankrupts having passed their examination, their accounts were admissible evidence; for the rule in equity was to admit the best evidence which the circumstances of the case afforded, *Whitfield v. Faussett*, Cas. temp. Lord Hardwicke. And the deed of arrangement entered into by the chief creditors with the bankrupts and their assignees (whereby 23,000*l.* was secured to Mr. Chambers, sen. as a consideration for submitting to the commission), was also additional evidence. That deed Lord Langford executed at the request of the assignees; they had recognized his Lordship as a creditor, and they consequently were stopped from opposing the proof.

Mr. Commissioner Holroyd was of opinion that proof for the amount which appeared on the bankrupt's books ought to be admitted.—The proof was admitted accordingly.

## THE STUDENT'S CORNER.

### INHERITANCE ACT.

To the Editor of the Legal Observer.

Sir,

The question raised by Y. Z., p. 59, is attended with all the difficulty of a conflict between

words and intention. There are but few in the profession who would not be startled by the proposition denying that a child inherited *all* its parent left, and asserting that the aunt came in for a share equal to the child. It is impossible to suppose the legislature *meant* to make this inroad upon justice, good sense, and venerable rule; but if we are to look at the words used (our only legal guide to the intention), I fear it is as impossible to escape the conviction that such has been the effect of the late act 3 & 4 W. 4, c. 106.

Your correspondent H. C., p. 105, in stating the act did not touch the case. He evidently had in his mind the fifth canon, viz. "that on *failure of lineal descendants* or issue of the person last seised, the inheritance shall descend to the blood of the first purchaser;" and seeing that in the case put by Y. Z. there was no *failure of lineal descendants* of the person last seised, rationally concluded that here we had nothing to do with ascertaining who was the first purchaser; that equity (before the statute) being material *only* where from a failure of descendants, collateral kindred became entitled. Unquestionably such a notion of the old laws was strictly accurate, and it is much to be wished the new law made no alteration respecting the necessity of looking out for the first purchaser. But I conceive the words of the act cannot be got over. The 2d sec. enacts "That in *every* case descent shall be traced from the *purchaser*." The purchaser is he who first acquired the estate to his family. Now, before the act, *descendants* only had to trace themselves to the person *last seised*. So that *before* the statute, the child, in the case put by Y. Z., only had to trace himself to his mother, who was the person *last seised*; but *since* the act he must trace himself to the *purchaser*, who was the grandfather A.—and as to the moiety of the estate in question the child cannot trace himself as sole heir to the purchaser A., seeing his aunt is also heir, and the two as coparceners must share.

It appears to me that the point hinges upon the statute having rendered it necessary, even in the case of *lineal descent*, to go up to the first purchaser; that necessity, I repeat, before the act not extending to cases of lineal descent, but being confined to collateral descent. The words "in *every* case" are sufficiently extensive to embrace the case of a lineal descent; but if doubt could arise upon those, the definition of the word "descent" in the explanatory clause settles it. "Descent shall mean the title to inherit land by reason of consanguinity as well where the heir shall be an ancestor or collateral relation *as where he shall be a child or other issue*."

When it is considered that if the child took jointly with the aunt, and afterwards died, leaving a child, the last-named child would have a moiety of his diminished share again—the construction of the act, if literal, does appear so outrageous and absurd, that a court of law would construe the statute otherwise (although a violence to the words might be thus

committed) many of your readers may suppose. I own I am most anxious to meet with the observations of any gentleman whose view may be adverse to my own, as I, like every body else, would be a willing convert from the opinion I have expressed.

J. B. W.

To the Editor of the Legal Observer.

Sir,

The question of Y. Z., at p. 59, upon the Inheritance Act, appears to me to raise a fine point, as to the case of coparceners; and although it has not been decided since that act passed, yet I cannot bring my mind to the conclusion of your correspondent "Shepton"—"that upon the death of one daughter, leaving issue, a son, her moiety or share will not descend upon her son alone; but, that instead 'Shepton' concludes that the moiety, of which the daughter dying was seised, would descend to her son and the surviving daughter in equal proportions." Now, with all deference, I ask "Shepton" how this can be? A. purchases an estate in fee simple, dies intestate, leaving two daughters coparceners,—one of the daughters, having become seised of her moiety by lineal descent, dies leaving a son,—does he not inherit from his mother as her lineal heir, and as such, is he not entitled to her moiety? The case, I conceive, is not within the Inheritance Act at all, except so far as confirms the son's title to his mother's moiety in toto. I agree with your correspondent H. C., 19 L. O., p. 105, that the case is within the first canon of descent—A. is the last purchaser—the daughter dying, takes her moiety by *descent*, and it is proved she so takes, and that she is *not a purchaser*; and, that therefore, her son is also entitled to her moiety by *descent*, and would still be coparcener with the surviving daughter. 1 Inst. 164 a; 2 Blk. Com. 188.

J. E., juo.

To The Editor of the Legal Observer,

Sir,

It is laid down by Blackstone as a fundamental principle of collateral descents, that the inheritance shall only result back to the heirs of the body of the first purchaser, upon failure of the issue and lineal ancestors in the last proprietor; and this rule is not affected by 3 & 4 W. 4, c. 106. To apply this rule to the case put by Y. Z. (p. 59, of the present vol.), it is evident that the whole undivided moiety of which A.'s daughter died seised, will descend to her son first, as being lineally descended from the last proprietor; and A.'s other daughter being only collaterally related to her sister can never succeed to any part of her sister's moiety, until failure of all her sister's lineal descendants *in infinitum*. Although the 3 & 4 W. 4, c. 106, s. 2, says the descent must be traced from the purchaser (defining what is

meant by "purchaser,") yet it does not by this annul the first principle of descents, viz., that inheritances shall lineally descend to the issue of the person who last died actually seised *in infinitum*. Blackstone puts a case similar to that of Y. Z. He says, "as if there be two sisters, Margaret and Charlotte, and Margaret dies leaving six daughters, and then John Stiles, the father of the two sisters dies, without other issue, these six daughters shall take among them exactly the same as their mother Margaret would have done, had she been living, that is, a moiety of the lands of John Stiles in coparcenary, so that upon partition made, if the land be divided into twelve parts, thereof Charlotte the surviving sister shall have six, and her six nieces, the daughters of Margaret, one a piece." (Stewart's Bl. p. 129.) According to Y. Z., Charlotte would take nine parts.

P.

WILLS ACT.

Sir,

In a society of which I am a member, a discussion arose in respect to the effect of the 33rd sect. of 1 Vict. c. 26; and the great importance of the subject induces me to hope you will allow your columns to be the means of investigating the subject.

The following statement of facts involves the point: *A.* devises to his son *B.* in fee simple; *B.* died in the lifetime of *A.*, having by will disposed in general words of all his real estate to *C.*, a stranger in blood. *A.* afterwards died, and at his death a child of *B.* was living; it has been contended that the 33rd sect. in its operation gives *C.* the estate, and that *B.*'s child has no interest, which in other words is to allow *B.* the power of devising an estate in which at the moment of his death he had not the shadow of an interest of any kind, seeing that *A.* his devisor was actually living.

I scarcely believed such a doctrine could be seriously laid down, until I was informed the proposition was either boldly advanced by, or received countenance from some of the numerous commentators who assail the ingenuous text of a statute the instant her Majesty has declared it the law, with all the eagerness of unoccupied ingenuity. Neither my purse nor my taste permit me to indulge in aught further than the bare statute, and I am consequently unable to refer your readers to any of the tribe of commentators, save one bearing the distinguished name of Sugden, the only gentleman whose name I have been informed sanctions the construction I have referred to. I shall feel considerably indebted to any of your worthy contributors, who may deem it worth while to state any argument which supports the doctrine, said to have been promulgated by Mr. H. Sugden, and I believe other writers upon the statute in question.

H. D. D.

SELECTIONS  
FROM CORRESPONDENCE.

LAW OF JOINT INTERESTS.

To the Editor of the Legal Observer.

Sir,

Your correspondent A. B. B., is under some misapprehension if he conceives that what is stated in your number of the 16th of November last, respecting the incapacity of a joint-tenant to bind his companion by his will if he do not survive him, is affected by the recent statute of Wills, 1 Vict. c. 26.

By that statute the party must have the interest at his death, *jus accrescendi præfertur ultimæ voluntati*, and the priority of time is in favour of the survivorship against the will of the deceased, as is forcibly described by Littleton and Coke (Co. Litt. 185 b.)

Mr. Stewart states it as clear, that a joint-tenant is not within the recent act, as to this point (1 Vict. c. 26, by Stewart,) but as is stated in your number of the 16th November, if the will of the deceased be a direction of a use under the statute of uses, he passes his share, and binds the survivor by it.

The point to which A. B. B. has directed his remarks is totally different. There the joint-tenant devising is presumed to survive; and clearly by 1 Vict. c. 26, a general devise by him extends to after-acquired property, and consequently may include what he obtains by survivorship or partition. The point was the same before the recent act with respect to personalty, and is so stated by Mr. Jarman (10 Jarin. Byth. 6.)

The extending the power of devising by the 1 Vict. c. 26, s. 3, to all contingent executory or other future interests &c., mentioned by A. B. B., has no particular reference to property by survivorship among joint-tenants. The *jus accrescendi* is as natural an incident to joint-tenancy, as a descent to heritable property. There is no contingency in it (2 P. Wins. 529; *Doe v. Wilson*, 4 B. & Ald. 303.) But the recent act includes the case of contingent survivor, as where an estate is to two and the heirs of the survivor: in which case the remainder in fee to the survivor is contingent, and was not devisable before the late act, the object being uncertain and unascertained.

All these points are fully considered in the treatise about to be published on the law of joint-ownerships.

R. C. S.

[Mr. Roberts also says, "The new statute does not interfere with the right of survivorship, so that after it, as before it, the will of a joint-tenant will be without effect, unless he becomes wholly seised or entitled." Roberts on 1 Vict. c. 26, p. 27. ED. L. O.]

CIRCULATING LAW LIBRARY.

Sir,

From the peculiar circumstances in which I am placed, I know that I shall never be called

upon to practise in common law; nevertheless, I must know just enough to insure my passing the examination. I am articled in an office where there is scarcely any common law, consequently I must acquire almost all my knowledge of it by reading. I have read some works, and now I wish to read "Selwyn's Nisi Prius," for which I shall have to pay nearly £3, though I know I shall never have time, during my articles, to use it after I have once gone through it diligently, or occasion for it, when my articles have expired. There are many other books which men want to read only once, but cannot afford to purchase for that purpose. A circulating law library, if in independent hands and well managed, could scarcely fail to answer. I might, by paying a guinea a-year and walking two miles every night after dinner, get for an hour and half the use of such books as happened to be disengaged at the law institution; but that would be rather an inadequate return for a guinea a-year, and a walk of two miles and back every day after eight o'clock at night. By way of an example, I have taken a list of the books mentioned in the "short courses" of study for conveyancing, chancery, and common law, recommended in the Articled Clerk's Manual, with the cost of five copies of each book, and ten copies of Blackstone: they are as follows:—

## COMMON LAW.

<i>Title of Work.</i>	<i>No. of Copies.</i>	<i>£ s. d.</i>
Blackstone, .. .. ..	10 ..	34 0 0
Selwyn's Nisi Prius, .. .. ..	5 ..	15 0 0
Noy's Maxims, .. .. ..	5 ..	2 0 0
Jacob's Law Grammar, .. .. ..	5 ..	1 10 0
Chitty's General Practice, .. .. ..	5 ..	18 0 0
Tidd's Practice, .. .. ..	5 ..	14 0 0

## CONVEYANCING.

Sanders on Uses, .. .. ..	5 ..	7 10 0
Cruise's Digest, .. .. ..	5 ..	28 0 0
Roberts on Wills, .. .. ..	5 ..	11 0 0
Sugden's Vendors, .. .. ..	5 ..	8 0 0

## EQUITY.

Mitfords Pleadings in Equity, .. .. ..	5 ..	5 0 0
Maddock's Principles and Practice of the Court of Chancery, .. .. ..	5 ..	14 0 0
Grant's Practice, .. .. ..	5 ..	8 0 0
Eden on Injunctions, .. .. ..	5 ..	5 0 0
Jeremy's Treatise on Equity, .. .. ..	5 ..	8 0 0

£179 0 0

Surely subscribers enough could be found to pay for the use of these books *at their own houses*, a liberal interest on £180. I have mentioned the retail prices which the public are charged for these books; of course they would not cost a bookseller or wholesale purchaser near so much.

Y. S. Y.

[We think if an articled clerk would judiciously lay out each year the sum which he must pay as a subscription to a circulating law

library, he would find that at the end of his clerkship, with the use of the ordinary books in an attorney's office, he would be well prepared to pass his examination. Besides, he can scarcely begin practice without some works of reference on the shelves of his office.—ED.]

## VALIDITY OF MARRIAGE.

Sir,

A marriage is contracted between *A. & B.* with the consent of their friends. A few months after the solemnization of such marriage, *A.* becomes a lunatic. *B.* (the wife) is under age, and her friends and guardian had not the slightest knowledge of the previous lunacy of *A.*, who it afterwards turns out has been under restraint. Nothing extraordinary appears in the husband's conduct, save that he is reserved, and upon enquiry of the father of *A.* he states that his son never has had anything the matter with him, and that his reserve is attributable to the late decease of his mother.

Is such marriage valid, and to what extent, and what is the remedy of the lady?

The 15 G. 2, c. 30, refers to the marriages of lunatics. I shall feel obliged to any of your numerous readers for any authorities with reference to the foregoing questions.

W. B. D.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## BANKRUPT.—RIGHT OF SURETY.

*A.* accepted bills for the accommodation of *B.*, which *B.* endorsed and deposited with his bankers as security for his floating balance with them. *B.* was afterwards declared bankrupt, and the bankers prored a debt under the commission far exceeding the amount of the bills, exhibiting them in their proof as being securities then held by them, and they received a dividend of 2s. in the pound on the amount of the proof. *A.* afterwards paid them the amount of the bills. Held, (reversing an order of the Court of Review) that *A.* was entitled to receive the past dividend from the bankers, and to stand in their place in respect of all future dividends on their proof to the extent of the amount of the bills. Should the bankers refuse to refund the past dividend to *A.*, this Court would order the assignees to pay to him that dividend to the amount of the bills out of the future dividends coming to the bankers; but quære whether the Court has jurisdiction to compel the bankers to refund.

This was an appeal from an order of the Court of Review by special case, which stated, among other things, that "in March 1837

Joseph Garner, an innkeeper and coach proprietor at Dunchurch, in Warwickshire, was duly declared a bankrupt, and three persons therein named, were appointed assignees. Previous to the bankruptcy, George Holmes, for the accommodation of the bankrupt, accepted four bills of exchange, amounting on the whole to 523*l.* 15*s.* 6*d.*, drawn respectively by, and made payable to the bankrupt, or order; one dated November 30th, 1836, for the sum of 183*l.* 11*s.*; another dated December 30th 1836, for 137*l.* 14*s.* 6*d.*; the third dated February 7th, 1837, for 127*l.* 10*s.*, all three payable respectively three months after date; a fourth dated February 7th, 1837, for 75*l.* and payable two months after date. All these bills were endorsed by the bankrupt, and deposited by him before his bankruptcy with his bankers, Messrs. Goodall, Gulson, & Co. of Coventry, as securities for any floating balance due or which might become due in respect of advances made by them from time to time to and for the bankrupt. They had no notice that the bills were accommodation bills. They proved under the fiat the sum of 7,526*l.* 14*s.* 11*d.* as a debt owing to them by the bankrupt upon the balance of accounts, and at the time of making such proof they exhibited the four bills among the securities which were then held by them for the balance. On the 10th of October, 1837, a dividend of 2*s.* in the pound was declared, and was then paid to the bankers, on the debt so proved by them, with the knowledge of Mr. Holmes. He afterwards, by various payments, paid the full amount of the bills to the bankers, and previous to the last payment made by him he apprised them that he claimed to be entitled to stand in their situation to the amount of the bills under the fiat, and to receive all future dividends on their amount, and he also required them, upon making the last payment to allow him the dividend of 2*s.* in the pound, received by them on so much of their debt as equalled the amount of the bills included in their proof, but they refused to do so, and claimed to retain the same, there being still a large balance due to them of the debt proved by them against the bankrupt. They did not prove those bills specifically as a debt under the said fiat, but exhibited them under the fiat amongst other securities held by them for the said balance of 7526*l.* 14*s.* 6*d.* In March 1839, a meeting for a further dividend was held, and Mr. Holmes attended, claiming to prove for the sum of 523*l.* 15*s.* 6*d.*, the amount of the four bills, as a debt owing to him by the bankrupt, and for which he was liable for the bankrupt at the time of the issuing of the fiat, but the commissioners refused to allow the proof. In April, 1839, he presented a petition to the Court of Review, praying that Court to declare him entitled, as between him and the bankers, to the benefit of, and to stand in their place in respect of, the proof made by them under the fiat, to the extent of the sum of 524*l.* 15*s.* 6*d.*, and to the benefit of the past and future dividends on such proof to such

amount as last mentioned, and that they might be ordered to refund to the petitioner the amount of the dividend of 2*s.* to the extent of 523*l.* 15*s.* 6*d.*; or that if necessary, the assignees under the fiat might be ordered to pay the amount of such past dividends on such last mentioned amount to the petitioner out of any subsequent dividends which might be payable to the said bankers on the balance of their proof after deducting the amount of the petitioner's acceptances, and that the assignees might be ordered also to pay to the petitioner all future dividends on the debt proved by the bankers to the extent of the amount of petitioner's said acceptances; or that if necessary, the petitioner might be declared entitled to go in and prove under the fiat for the amount of the acceptances, and receive dividends thereon equally with the other creditors, not disturbing the prior dividend; and that in the last mentioned case, the proof of the debt by the bankers might be reduced accordingly, or be ordered to stand only as a proof for the amount proved; less the amount of the petitioners' acceptances. This petition was heard the 25th May last, before the Court of Review, whereupon that Court ordered it to be dismissed with costs as against the bankers; but ordered that the petitioner was entitled in their place to receive out of the estate of the bankrupt, all future dividends in respect of the sum of 523*l.* 15*s.* 6*d.*; and that the costs of the petitioner and of the assignees should be paid out of the bankrupt's estate. The petitioner feeling aggrieved by that order, so far as it deprived him of the past dividend, appealed to the Lord Chancellor.

Mr. Swanston was heard for the appellant on the 10th of August last, just before the last vacation. Mr. Rogers was now heard on the same side. The petitioner was a surety to the amount of his acceptances, which he has paid in full to the bankers, the holders. By the 52d section of the Bankrupt Act,<sup>a</sup> a surety "if he shall have paid the debt, or any part thereof, in discharge of the whole debt," is declared, "if the creditor shall have proved his debt under the commission, entitled to stand in the place of the creditor who has proved as to the dividends and all other rights under the commission, which the creditor possessed, or would be entitled to in respect of the proof, &c." The appellant's case was completely within that enactment, and no argument could make it stronger, and it was also supported by the cases *Ex parte Brimskill*,<sup>b</sup> *Bardicell v. Lydall*.<sup>c</sup>

Mr. Swann for the bankers, the respondents.—The appellant had kept an account with the respondents. The course of business was this—when he required an advance of money, he deposited bills of exchange or promissory notes as security for the floating balance against him in the accounts. These bills were held for their full value, and were available securities to the bankers as long as

<sup>a</sup> 6 G. 4, c. 16.

<sup>b</sup> 4 Dea. & Chitty, 442.

<sup>c</sup> 7 Bingh. 489.

any thing was due to them from the bankrupt. They were deposited not to secure 523*l.* 15*s.* 6*d.*, but what balance was due from the bankrupt. There was a balance of 7526*l.* 19*s.* 1*d.* due, and the bankers were entitled to the dividends on that sum, besides the full amount of these bills. *Ex parte Summan.*<sup>a</sup> The case of *Bardwell v. Lydal*, had no application here, as the surety in that case was for a particular debt, but the appellant was surety for any balance against the bankrupt.

Mr. Steere appeared for the assignees, submitting to any order the Court might be pleased to make.

Mr. Swanston in reply, insisted that the dividend of 2*s.* in the pound received by the bankers was spread over every pound of the 7526*l.* proved by them, including the amount of these bills. The amount, therefore, due to them on these bills was 18*s.* in the pound, but they have received 20*s.* in the pound on them, in addition to the 2*s.* in the pound. They have therefore received in this part of their debt 22*s.* in the pound. The case of *Ex parte Brimskill* was decisive that they must refund the dividend to the extent of the amount of these bills.

The Lord Chancellor.—The order of the Court of Review in this case assumes that if the surety had paid the amount of the bills before any dividend was declared, he would be entitled to all the dividends. I must take time to consider the case. I will dispose of it on Wednesday.

The Lord Chancellor gave judgment on the day mentioned. His Lordship after stating the facts, said, the petitioner having paid the bills, prayed to be let in to stand in the place of the bankers, and be declared entitled to receive from them the dividend of 2*s.* The Court of Review refused that part of the petition, but allowed him to be entitled to all future dividends to the extent of the 523*l.* Now by the 6th section of the bankruptcy act, the surety is declared to be entitled to be in the place of the creditor, who has proved his debt to the extent of the sum for which he was surety, and which he has paid. Why should not the petitioner be entitled to the dividend of 2*s.*? The order appealed from admitted him to be entitled to the future dividends. On what principle is he entitled to the future dividends, that does not also entitle him to the past dividends, he having discharged the whole debt for which he was surety? It was argued that the creditor has a right to appropriate payments to such of his demands as he thinks proper. That principle has no application in this case. The dividend of 2*s.* was applicable to every pound of the proved debt, including the amount of these bills, and if the bankers were to be allowed to retain the dividend of 2*s.* in addition to the payment made in full for these bills by the petitioner, they would have received 22*s.* in the pound for this part of their debt; which would be contrary to reason, and

to the cases. *Bardwell v. Lydall*, *Ex parte Rushworth*,<sup>c</sup> *Paley v. Field*,<sup>f</sup> *Martin v. Bricknell*,<sup>g</sup> *Ex parte Brumskell*. If the first dividend of 2*s.* is to be applied to the sum of 523*l.* the amount of these bills, as it clearly is, then the right of the petitioner to that dividend is not to be questioned. That part therefore of the order of the Court of Review dismissing the petition with costs as against the Bankers must be reversed.

If there should be any difficulty in making the order on the bankers to refund, let the matter be mentioned again. In that case I would stop this sum out of the future dividends payable to the bankers, in residue of their debt.

*Ex parte Holmes, in re Garner*, at Westminster, Nov. 4th and 6th, 1839.

### Queen's Bench.

[Before the Four Judges.]

#### FOREIGN JUDGMENT.—PLEADING.

In an action upon a foreign judgment, as the courts here are called on to enforce it, they must first be satisfied that it was not obtained by a practice which gave the defendant no opportunity of appearing before the court which pronounced the judgment.

An Irish judgment is subject to be examined in this manner, when made the subject of an action in the courts of this country.

In an action on a foreign judgment, the defendant pleaded that he had never had notice of the original action, nor been served with process therein. The plaintiff replied that he had been served with process, to wit, a certain writ of summons &c.: Held, that the replication was bad.

Assumpsit on a judgment in the Court of Common Pleas in Ireland. Plea that the defendant had not been arrested nor served with process from the Court of Common Pleas in Ireland, nor had had notice of any process in the original action. Replication, that the defendant had had notice of process, to wit, a writ of summons issued out of the said Court of Common Pleas in Ireland. Demurrer, shewing for cause that the plaintiff did not in and by his replication deny, nor confess and avoid any substantial matter of fact alleged in the said plea, but raised an immaterial issue, and that the matter stated in the replication was no answer in law to the second plea, and that it was consistent with the allegation in the replication that the process there mentioned might have issued in another action, and at the suit of a third person. Joinder in demurrer.

Mr. Butt for the plaintiff.—The plea is bad: it does not state that the defendant had no notice of a writ of summons, nor that the defendant was not brought into the Court in Ireland by that or some other mode. It is no answer to this action to say that the party has not been arrested in the former action, nor served with process; nor is it an answer to say that he did not appear in Court, for he might have suffered judgment by default.

<sup>a</sup> 1 Dea. & C. 564.

<sup>b</sup> 10 Ves. 409.

<sup>c</sup> 12 Ves. 435.

<sup>d</sup> 2 M. & Selw. 39.

[*Mr. Justice Coleridge*.—Still there would be an appearance, for you might appear for him.] But it is not stated that such was not the fact; that an appearance was not entered for him. That defect alone is fatal to the plea. [*Mr. Justice Coleridge*.—Can any good judgment be obtained against a person who never appeared to the action, or rather, shall we enforce a judgment which appears to have been obtained in the absence of the party.] The defendant here does not say that there was no service. [*Lord Denman, C. J.*.—But if there was, you might have replied it. The question with me is whether they had a right to deny this in an action on a judgment which on the face of it appears to be a good judgment.] The plea does not answer the declaration, but at all events the replication is good, and establishes the right of the plaintiff to sue on this judgment.

*Mr. Hurlstone* for the defendant.—The plea is good, and the replication is bad. This is an Irish judgment, and therefore not a record in this country. It may be sued on an assumpsit, and consequently it may be impeached here. *Harris v. Saunders*.<sup>a</sup> The liability therefore arises by implication of law. This Court is called on to enforce the judgment, and therefore may well examine whether the judgment has been rightly or wrongly obtained. A judgment obtained contrary to reason, as in the absence of the party to be charged, cannot give rise to an implied assumpsit. That was the rule adopted in *Buchanan v. Rucker*,<sup>b</sup> and in *Cavan v. Stewart*,<sup>c</sup> where it was held that a party might shew that at the time of judgment obtained, the Court had not jurisdiction. [*Lord Denman, C. J.*.—In *Bequet v. M'Carthy*,<sup>d</sup> it was held, that you could not inquire into the grounds of a foreign judgment, unless they were such as to be clearly and unequivocally bad; and *Martin v. Nicolls*,<sup>e</sup> was there referred to.] But those were cases where bills had been filed, not for relief, but discovery. *Guinness v. Carroll*,<sup>f</sup> was a question as to how far an Irish judgment could be disputed, but that was an enquiry into the merits of the case, and on them as the Court below had jurisdiction, its demand was of course final. In pleading, the party seeking the assistance of the Court must make out a *prima facie* case; here it is sufficient to shew that the defendant has not appeared in the court where the judgment was obtained, so as to give it jurisdiction. In *Douglas v. Forrest*,<sup>g</sup> the Court examined into a Scotch judgment, and the courts here have always acted on the principle that they will not give effect to foreign judgments which appear to have been unduly obtained: That principle is directly applicable here. [*Lord Denman, C. J.*.—We wish to consider the plea, we do not think the replication good.]

*Cur. adv. vult.*

*Lord Denman* delivered judgment.—This was

an action on a judgment obtained in the Court of Common Pleas in Ireland. The defendant pleaded that he had not been arrested or served with process in the original action; that he had not, at any time, notice of the process against him in that action, or of the cause of action therein, and that he had never appeared to the same. The judgment therefore appears by the plea to have been obtained behind the back of the defendant. The plaintiff replied to this plea by stating only that the defendant had notice of certain process, to wit, a certain writ of summons. There was a special demurrer to this replication, and there can be no doubt that as an answer to the plea it is bad, for it does not shew that the process of which the defendant was alleged to have had notice was the process in the original action, or related to this plaintiff. The question therefore which we have to decide depends upon the plea. It was said in the argument that if the judgment was open to the objection raised on the plea, it was one on which the defendant might have moved in the court in Ireland to set it aside, and that as he had not adopted that course, the judgment must be assumed to be good. It was answered that that argument would put an Irish judgment in this Court upon a footing with our own, or indeed in some respects to put it in a still more advantageous position. The question now is whether the judgment was recovered under such circumstances as to warrant the Court in exercising a jurisdiction in the case, as the defendant was not in any way before the Court when the judgment was obtained. We think it is impossible for us to allow a judgment so obtained to be made the foundation of a proceeding by way of action here. Our judgment must therefore be for defendant.

*Ferguson v. Mahon*, M. T. 1839. Q. B. F. J.

#### Queen's Bench Practice Court.

SHERIFF.—CHANCELLOR.—WRIT.—MANDATE.  
—COUNTY PALATINE.—ATTACHMENT.

Where the Chancellor of a County Palatine directs his mandate to the Sheriff, the latter may return it either to the Chancellor or to the Court out of which the writ issues; and, therefore, although he has returned it to the Chancellor after being ruled to return it to the original Court, or to the Chancellor, he is not liable to an attachment.

This was a rule, calling upon the plaintiff to show cause why a writ of attachment, issued by him against the sheriff, should not be set aside with costs.

The attachment was grounded on a disobedience to a judge's order, which had been made a rule of this Court, by which the sheriff was required, in a cause of *Hart v. Dukes*, within eight days, to make a return of a writ of *testatum capias ad satisfaciendum* directed to the Chancellor, or else of the mandate which the Chancellor had directed to him.

*Barstow*, on showing cause, contended, that

<sup>a</sup> 4 Barn. & Cres. 411.    <sup>b</sup> 1 Camp. 63.

<sup>c</sup> 1 Stark. 525    <sup>d</sup> 2 Barn. & Adol. 951.

<sup>e</sup> 3 Sim. 458.    <sup>f</sup> 1 Barn. & Adol. 459.

<sup>g</sup> 4 Bing. 686.

if the sheriff, previous to the rule being served, had made his return to the Chancellor, it would then have been finished; but no return having been made, and this Court having ordered him, it was his duty to make the return to this Court instead of the Chancellor's.

The question was, whether, under the present state of practice, the return of the writ should have been to this Court? By the new rule, M. T. 7 W. 4, eight days instead of six are given to country sheriffs to make a return of a writ on mesne and final process. This inconvenience must then ensue: suppose eight days were allowed the sheriff to make a return of the mandate to the Chancellor, and eight days again were allowed by the Chancellor to return it to this Court, the plaintiff would be delayed sixteen days.

*Cowling*, in supporting the rule, submitted, that as the order was in the alternative, and one branch of it having been fulfilled, no attachment ought to ensue. *Vaughn v. Sawyer*,<sup>a</sup> is a case in point.

*Williams*, J.—I see the latter alternative of the rule has reference to the mandate. And on looking at the mandate it requires the sheriff to make known to the Chancellor what is done upon that writ. The sheriff has therefore done what the mandate required him to do. It seems to me, that he has complied with one alternative contained in the rule, to return either the writ or the mandate, and that this rule ought, therefore, to be made absolute.

*The Queen v. The Sheriff of Lancashire, in a cause of Hart v. Dukes*, Q. B. P.C. M.T. 1839.

### Common Pleas.

#### LONDON AND BRIGHTON RAILWAY ACT, 1 VICT. C. CXIX.—PLEADING SEVERAL MATTERS.

*The London and Brighton Railway Act*, s. 148, provides, that the company may bring actions to recover the amount of calls due from the subscribers to the undertaking, and may declare generally, alleging the defendants to be indebted in respect of the shares, without setting forth the special matter, and that on the trial of the action, it shall only be necessary to prove that the defendant at the time of making the calls was a proprietor of the shares, and that due notice of the calls has been given according to the act. Upon an application by the defendant in such an action to plead several matters, the Court refused to allow him to traverse the fact of due notice of the calls being made having been given.

Held also, that a plea that the calls were made for other purposes than those mentioned in the act could not be pleaded, and that the proper place to agitate such a question was at a general meeting of the subscribers to the company.

Held also, that a plea that the calls were made to pay the expense of deviations from the prescribed line of railway, could not be pleaded.

Section 136 of the same act provides, that the capital of the company "shall be 1,800,000*l.*, divided into 36,000 shares of 50*l.* each;" the Court refused to allow a plea, denying the existence of 36,000 shares in the company.

These were actions of debt brought against the respective defendants in the two suits, to recover the amount of calls made in respect of certain shares alleged to be held by them in the undertaking to form a railway from London to Brighton, which is authorized by the act of the 1 Vict. c. cxix. The defendants in both actions had applied to a learned Judge at chambers for leave to plead several matters.

In the case of the defendant *Wilson, Erskine*, J., allowed the following pleas to be put on record; first, that the defendant was never indebted; secondly, that the defendant was not a proprietor.

In the case of *Fairclough* the same learned Judge had allowed similar pleas, as well as a third plea, that fewer shares had been issued by the directors than were required by the statute.

*Cowling*, in this term, moved, on behalf of Fairclough, for leave to plead, fourthly, that the company had made deviations in constructing the line of railway, not warranted by the act, and that the calls were made for the purpose of paying the expenses of those deviations.

*Crompton* also moved, on behalf of Wilson, to plead, thirdly, that due notice of the calls was not given according to the act of parliament; fourthly, that no time or place was appointed for the payment of the calls, nor persons to whom they should be paid; and fifthly, that the calls were made for other purposes than those mentioned in the act, and were not necessary for carrying on the undertaking.

*Wilde*, Serjt., and *Sirann*, on a subsequent day, shewed cause against the rules obtained on these motions, and applied also that the third plea allowed at chambers in the case of the defendant Fairclough should be expunged.

They contended that the first two new pleas sought to be pleaded in Wilson's case were quite unnecessary, because they only sought to traverse that which must be proved by the plaintiff in support of his declaration, under the provisions of the 148th section of the act. The third plea desired to be put on the record by the same defendant would raise questions which were improper to be entertained by a court of law. It was a mere fishing plea, and its object was only to endeavour to discover some error to have been committed, with a view to defeat the action. The directors were, doubtless, bound to apply the produce of the calls only in the manner prescribed by the act, and if they failed in doing so, they might be questioned as to their mode of proceeding at a special general meeting, or at one of the half-yearly general meetings of the company, but it was obviously intended by the act that the litigation of such questions in a court of law should not take place. It was, in fact, only adopted as a mode of evading the act by

bringing under discussion every thing referred to by its provisions.

With regard to Fairclough's case, the question of deviation sought to be raised did not arise between the plaintiff and the defendant. The provisions of the act in this respect were referable to disputes which took place between the company and the public, and not to such as should occur among the proprietors. The plea that fewer shares were issued than the act required, must there be struck out. The plea alleged that 36,000 shares were authorized to be issued, and that there were only 35,000 in the company; but the 136th clause absolutely provided that the capital should be divided into 36,000 shares of 50*l.* each, which might be increased in number, the value being diminished, under the 138th section of the act, and the directors could not be made answerable, by reason of their inability to sell or otherwise dispose of any of them.

*Crompton*, in support of the rule, contended that the defendant Wilson sought only to put in issue those facts which were necessary for his defence, and which would not be traversed by a plea of the general issue only. The power to make calls was conditional only, and the directors could not exercise that power for other purposes than those connected with the work which they were authorized to carry out. There could be no inconvenience in the pleas being pleaded to the plaintiff, for the proof would lie on the defendant.

*Couling*, for Fairclough.—The Court would not reject the plea of deviation, unless they saw that the plea was clearly bad. The provision which related to deviations was intended as much for the benefit of the subscribers as of the landowners and the public. With regard to the plea, which alleged fewer shares to be in existence than were provided for, the object of the legislature in requiring so many shares to be made was to protect the subscribers, and when they became proprietors, it was under an impression that the work was to be carried out in a certain manner. If, however, so few shares were called into existence, they could hardly be called upon to pay, because the contract was not fulfilled by the directors.

*Tindal, C. J.*—The power given to the Court by the statute of Anne is discretionary, and I think that the pleas sought to be pleaded are such as do not involve the justice of the case. The first two pleas desired by Wilson to be pleaded are quite unnecessary, because, in fact, the subject-matter, which they propose to deny, must be proved by the plaintiff in the evidence which they must give in support of the declaration. They are that due notice of the calls were not given, and that no time or place was appointed for their payment, nor persons to whom they should be paid. Now, looking at the 148th section of the act, it is expressly provided, after its being directed in what way the plaintiff shall declare, that "on the trial of such action it shall only be necessary to prove that the defendant at the time of making such respective calls was a proprietor

of such share or shares in the said undertaking as such action is brought in respect of, or some one such share, and that such notice was given as is directed by this act of such call or calls having been made." Now these facts are only provided for in the negative, it is true: "It shall only be necessary;" but it is in fact directly ordered, and the plea of never indebted will clearly call upon the plaintiff, before this debt can be said to be recoverable, to obey those conditions which are imposed upon him.

With regard to the plea that the calls were made for other purposes than those mentioned in the act, I think that it cannot, in justice to the parties concerned in this litigation, be allowed to be put on record. It would be exceedingly difficult to prove, if the *onus* were thrown on the plaintiff, for who could shew what was the intention of the parties when the money was called for? and is it at all material what they were? The only difference would be that the money might be applied to other purposes than those intended,—that although it was called for with a certain intention, that intention might not be carried out. But the act has made a call, when properly made, an absolute debt, and it is limited to that. The 148th section, after providing what I have already said as to the evidence to be given by the plaintiff, then enacts, "and the said company shall therefore be entitled to recover what shall appear to be due, including interest." It is observable, therefore, that if we were to grant these pleas, which seek to put the defence on a different footing from that which is properly authorized, we should proceed in opposition to the statute, which provides that the money shall be recovered in a certain way. With regard to the question of whether the money is due for proper calls, that should not be discussed in a court of law. It belongs to a different quorum, and to another place, and if the parties oppose the proceedings of the directors, it is their duty to discuss the matter at a general meeting of the society, and if the general meeting is so far distant as to render such a course inconvenient, then within a certain time they may call a special general meeting, under the terms of sect. 172.

The other plea that a deviation has taken place in the line of railway, leaves the matter in a more tangible shape: it alleges a deviation, and says that the money is called for to pay the expences incurred in consequence. Now, what would be the effect of allowing such an answer to be set up? If any deviation to the extent of three yards only were made, with the consent of the parties who owned the land adjoining the works; and a call were afterwards made, every proprietor might stay his hand, refuse to pay his call, and the whole proceedings would be broken up altogether. It is really so monstrous a proposition, and so unlike anything in the act, that it cannot for one moment be sustained.

Then as to the plea, that at the time of the calls being made there were not 36,000 shares

in the company, on what does that stand? Sec. 136 enacts that notwithstanding anything in the several subscription deeds or contracts relating to the said several lines contained, the capital of the company hereby incorporated shall be 1,800,000*l.* divided into thirty six thousand shares of 50*l.* each." It is impossible therefore that the plea can be true. There may not be 36,000 shares called into action perhaps, or for which subscribers have been found; but the act specifically provides that the capital shall be of a certain amount, "divided into 36,000 shares." It seems to me then, that these pleas are rather calculated to raise difficulties than to set up any good ground of defence, and none of them can be allowed.

*Bosanquet, J.*—I am of the same opinion, and I think that the first two pleas sought to be put on the record are quite unnecessary, because the plaintiff will be bound to prove the facts which they would traverse. As to the other pleas, independantly of any other agreement, I think that under sec. 148, it is not competent to the defendant, when the plaintiff has proved what he is directed to prove, to set up the defence; and this observation applies with more force to the plea, that the calls were made for other purposes than those mentioned in the act. The consequence of allowing that plea would be this, that if the directors of the company, which was established for certain purposes, should do any one thing illegally which cost money, the defendant could set up as a defence, that that expence had been incurred and that the calls were made for the purpose of paying it.

*Maule, J.*—I also think that these pleas are against the policy, as well as the express terms, of the statute, and ought not to be allowed.

Rules discharged.—*The Brighton Railway Company v. Wilson; Same v. Fairclough, M. T. 1839. C. P.*

#### Exchequer of Pleas.

#### USE AND OCCUPATION.—EVICTION UPON ASSUMPSIT.—SPECIAL PLEA.

*To a count for use and occupation, the defendant pleaded specially an eviction during the quarter for which the rent was sought to be recovered: held bad, as amounting to non assumpsit.*

This was an action of assumpsit for the use and occupation of certain apartments. There was a special demurrer to the defendant's plea, assigning for cause that it was an argumentative traverse of the contract mentioned in the declaration.

*Hurlstone* supported the demurrer, but was stopped by the Court.

*Dowling*, in support of the plea. The plea confesses and avoids the action. It admits the contract as alleged in the declaration, but shows, that the right to recover the rent for a certain period is suspended by the eviction of the defendant. In *Waddilove v. Barnett*, which was an action for use and occupation, it

was held, that the defendant might, under the general issue, give in evidence the fact of the plaintiff having mortgaged the premises prior to the commencement of the tenancy, and that the mortgagee had given him notice not to pay the rent to the mortgagor, but that under such plea he could only discharge himself as to the rent which accrued due *after* the notice, and that in respect of the by-gone rent, the matter must be specially pleaded. That that decision was given on the ground that an occupation by consent of the mortgagee had taken place, and that there was a right of action against the defendant up to the time of giving the notice. The Court considered, that as to such rent the facts only amounted to a confession and avoidance, as the character and consequences of the by-gone occupancy could not be altered by the notice. In the present case there has been an occupation, in part, up to the time of the eviction. If the general issue alone was pleaded, the plaintiff might produce, at the trial, the written agreement under which the defendant held, and that would be evidence of the contract declared upon.

*Parke, B.*—The promise laid in the declaration arises by implication of law, from the fact alleged; namely, "that the defendant held and enjoyed the premises by the sufferance and permission of the plaintiff. The general issue would deny that fact, and this plea is bad as having an argumentative traverse of the facts from which the implied promise arises. The defendant may have liberty to amend, otherwise,

Judgment for the plaintiff. — *Prentice v. Elliott, M. T. 1839. Exch.*

#### THE EDITOR'S LETTER BOX.

The new Penny Postage is to come into operation on the 10th of January. Such of our Country Subscribers as desire to receive the Legal Observer by Post will please to send their names to the Publisher. We shall state the mode in which it will be supplied in our next Number.

After the hearing of the appeal by the Judges, reported p. 136, *ante*, we are informed that a meeting of the Board of Examiners was held to consider the circumstances of the appellant's case; and after much consideration of the particular case, and its bearing on other cases, not only at the same examination, but with reference to the mode of proceeding in future, the Examiners deemed it right to decline any further examination at present.

The Letters on the Preliminary Examination of Articled Clerks; and on the Non-payment of Country Agents; will be inserted in an early Number.

We cannot undertake to insert or answer the various Queries which are sent us, although we occasionally find room for the discussion of useful points.

*Erratum*, p. 137, last line, insert "not" before the words "exceeding half an ounce weight."

# The Legal Observer.

SATURDAY, JANUARY 4, 1840.

— "Quod magis ad nos  
pertinet, et nescire malum est, agitamus."

HORAT.

## REFORM IN CHANCERY.

We have now for some years been humble but zealous labourers in the cause of Chancery Reform, and besides our own remarks and suggestions, and those of our correspondents, we have brought before our readers the several plans for effecting it of Mr. Lynch, Mr. Garratt, Mr. Miller, and Mr. Spence, gentlemen of very different politics, two being Tories, and the other two being Reformers, but all concurring in this, perhaps the most called-for, of all reforms. We cannot commence the year 1840 to better advantage, as we think, than in renewing the subject, and we do so for the purpose of gladly hailing another labourer in the vineyard—the Quarterly Review, which has often before assisted the cause of judicious law reform. In the number for December, just published, we find a sensible article on the state of the Equity Courts; and as we conceive that our readers are now pretty well acquainted with the present state of the question, we think we cannot do better than give the remedy for the admitted grievance proposed by the reviewer. He begins by stating "the existence of a general conviction amongst well-informed and able men that considerable reforms are required in our Courts of Equity, and that the time is fast approaching when some attempt to carry them into effect must be made by the legislature;" and then, after briefly referring to the long list of causes set down for hearing, the difficulties and delay of obtaining it, and the great inconvenience of the established rule in equity pleading, that all persons interested must be parties, the writer proceeds to propose the following plan:—

"It is expedient to give a power, not merely of deliberation, but of legislation, to some body

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of persons on these and other such subjects. And we think, upon the whole, that it would be best to follow the precedent already made, [that of the common law commission] and to vest in the Lord Chancellor, the Master of the Rolls, the Vice Chancellor, the Lord Chief Baron, the Equity Baron of the Exchequer, one of the Masters in Chancery, and one eminent barrister, or any five of them (the Lord Chancellor being always one) the power of altering all proceedings in the Courts of Equity, and of directing new modes of pleading and taking evidence if necessary, so as to shorten and simplify, and render less expensive the proceedings in those Courts. This is a power which parliament cannot exercise in person. • • • • We think, therefore, that the public good would in the end be best attained by the arrangement we propose,—and it has at least one merit, that it would cost but little; for of course all those eminent persons who are already in office would not have any increase of salary, but would consider this as only a part of their judicial duties. These regulations should have the effect of laws enacted by parliament; but in order that there may be reserved to each branch of the legislature a complete *veto*, according to the precedent to which we have referred, they should, although acted upon immediately, be laid before parliament within a limited time, which should be as short as possible; and if either house, by resolution, dissented from all or any of them, the whole, or that part dissented from, should thenceforward be void. The *veto* of the crown, in like manner should be preserved by not allowing them to be acted upon at all till published in the Gazette by order of the Privy Council."

So far for a mode of altering the defects in Equity Pleading. Now for the disposing of the existing arrear in causes and other business before the Courts, which the writer says, and truly says, is increasing "in the Court of the Master of the Rolls as well as in those of the Chancellor and Vice Chancellor."

"Some additional assistance must therefore be provided, and two plans seem to have been

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presented to the attention of the legislature; one being to establish a new judge in the Court of Chancery, and the other to increase the efficiency of the Equity Court in the Exchequer. We are inclined to think that both plans should be carried into effect, and that the addition even of these two judges would rather fall short of than exceed the necessity of the case. The advantage of the former plan, in case one only be persevered in, is, no doubt, the uniformity which would be preserved, both in questions of practice and in the ultimate decision of the causes, by the general superintendence on appeal which the Lord Chancellor would exercise over the whole of his Court. On the other hand the economy of the latter plan is a powerful reason for adopting it. At present, we have, in the Exchequer, a Court complete, or nearly so, as to all its officers—and only requiring a judge constantly presiding there, and, if we mistake not, (and we have no doubt that our information is correct,) even the salary of an additional baron might be provided for out of the suitor's fund of the Court of Exchequer, without costing the country a single farthing. The present annual surplus of the interest on that fund (after providing for certain salaries of the officers of Court, amounting to 2,100*l.* per annum) exceeds 7,000*l.*, and it is accumulating now to no very useful purpose. If, however, this fund were thus applied, the government might perhaps be called upon to undertake to guarantee the suitors against any possible risk. We do not apprehend that, if this were done, the danger to the revenue would be very imminent. In truth, no guarantee is requisite, for this fund is the produce of the investment in the stocks of a portion of the sums paid in for temporary purposes, and which the suitors do not wish to be invested at interest for their benefit. These sums had, till lately, been paid into the Bank of England, and the average balance, bearing no interest, was very great, productive in fact, of benefit only to the bank. A power, therefore, was given to invest a part of it in the funds, leaving a sufficient balance to answer all current demands. The increase of the business of the Court would probably increase this fund, in like manner as the surplus of deposits at the bank increases with the increase of the business of the firm. We, therefore, if we were to choose between the two plans in the present state of the finances of the country, would prefer the latter; and in order to obtain that uniformity of decision, which we agree cannot be too highly valued, we think it worthy of consideration, whether the immediate appeal from the Court of Exchequer in Equity might not be well transferred from the House of Lords to the Lord Chancellor, limiting, perhaps, the ultimate appeal to the House of Lords, to those cases where the decision of the court below is reversed by the Chancellor. In addition to this, the practice should be made uniform, in the same manner as was done in the three Courts of Common Law, by orders from the body before alluded to, consisting of

all the judges of the Courts of Equity.<sup>a</sup> But we have no doubt that it will be found necessary to carry both plans into effect, and we are clearly of opinion, with Lord Langdale, that any expense incurred for that purpose, will be found to be the truest economy."

But the reviewer also glances at a *pro tempore* and extraordinary mode of disposing of the existing arrear, which has already been suggested in these columns: we mean the appointment of a temporary commission, to consist of persons having held the great seal, annexing to such appointment a salary of 7000*l.* a-year, which would be during the joint lives of Lord Cottenham, Lyndhurst, and Brougham only an additional expense of 2000*l.* a-year each. This would be in accordance with a suggestion originally made by Lord Eldon, who always said that an Ex-Lord Chancellor should do something for his salary. If this suggestion be seriously entertained, we think it should be made to extend to the Great Seal of Ireland as well as that of England, as it would thus render available the services of Sir Edward Sugden and others.

We shall also extract the observations of the reviewer as to the Masters' Offices; and he very properly says that, unless the reform extends to them, it will be of very little use. It will be seen that we have had the good fortune to anticipate most of his suggestions in the remarks we recently made on the same subject.<sup>b</sup> But they cannot be brought before the public too often until the grievance be remedied.

"Now to the third stage, the Master's offices. Here also additional help is possibly needed; but before it is applied for, the public ought to be fully satisfied that all is done which can be by the present staff. In order to accomplish this purpose, we are clearly of opinion that it is necessary that the Masters should do their business in public, and should take their cases in orderly rotation, if possible. Every one who is behind the curtain, knows how great

<sup>a</sup> One important difference between the Equity Court in the Exchequer and the Court of Chancery exists, which we should have thought needed only to be mentioned in order that it might be corrected. There are fees payable in name to the Queen's Remembrancer, but in reality, to the Treasury, which are levied on the suitors, in addition to those payable, as in the Court of Chancery, to the officers of the Court. For these additional fees no business is done, yet, though, as we are informed, both Lord Abinger and Mr. Baron Alderson, have repeatedly brought this shameful anomaly before the proper authorities, they have as yet done so without obtaining redress for the suitors.

<sup>b</sup> See *ante*, p. 98, 99.

facilities for delay the want of publicity affords. The Master sitting in public becomes a judge—if he is not punctual to his time, if he is uncertain in his decisions, or if he allows frivolous reasons for postponement, he loses reputation—and besides, the privacy of a Court allows of the holding of office by inferior persons. These appointments are now no longer in the gift of the Lord Chancellor, but have been (without very good reason we think) transferred to the prime minister: and we have an old-fashioned constitutional jealousy, in which we believe the public to participate, lest they should be given to brawling politicians, rather than to accomplished lawyers. We would therefore wish them to sit in public at given times and in given places, and to hear the matters referred to them, not as they do now, by many and short instalments, at long intervals, but in orderly rotation, and if possible, to an end in one or two hearings. There is another arrangement also, which we should wish to see adopted. The references to these officers are on various subjects. Sometimes they are called upon to determine whether a complete title to landed property can be made by a vendor to a purchaser; sometimes to wind up a long and intricate mercantile account under a partnership; sometimes to trace out a fraud. These and various other matters obviously require talent and information of wholly different kinds. Why is the division of labour not resorted to? The causes, we believe, are referred to each Master in a sort of rotation; and the consequence is, that when, for instance, a conveyancing question goes to a non-conveyancing Master, the unhappy parties have often to lay a case before some eminent conveyancer, in order that the Master may come to a proper decision. This ought not to be the case. Why are not all such cases referred to a Master specially appointed for his knowledge of them, who by that very knowledge, and the devotion of his understanding to one subject, would not only decide with greater dispatch, but with incomparably greater satisfaction to all parties?—and in like manner as to other subjects. As to accounts, which occupy a great portion of the time, and cause much of the expense, why are these not taken from the Masters in Chancery, and referred to accountants specially appointed to take them, under the superintendence of the Masters?—mercantile men or attorneys, or the like, might then be appointed with great advantage for those purposes. Again; why is one Master constantly employed in signing affidavits and other mere routine details, when the business is in fact done before his desk by an officer, who might just as well act in person, and who, if he did so, would set one more master at liberty, who might then be employed to do important work for the real benefit of the suitors? These, and we doubt not, many other arrangements, might be made, and if made, might increase the power in the Master's offices. If, then, their number still remained insufficient to keep up with the increased speed of the Court, more Masters must be appointed. But we own we think that

the division of labour we have suggested, and the sending of accounts to accountants appointed by the Court, who should act under the superintendence of the Masters, would probably be found sufficient."

Here we shall leave the subject for the present. But we shall shortly bring before our readers the actual state of the business now in arrear—a painful but a necessary duty.

## PRACTICAL POINTS OF GENERAL INTEREST.

### JOINT-STOCK COMPANY.

We have from time to time given most of the recent cases as to joint-stock companies. We add the following:

A contract was entered into by certain persons being directors of the "United Mine Company." There were originally seven directors; two of them were dead before the alleged contract; a third had become previously bankrupt, since which time he had ceased to take part as director in managing the concerns of the company. The remaining four directors brought an action; and the question was whether the bankrupt director should not have been made a party to the suit. In the judgment delivered by Mr. Justice *Littledale*, he gave an opinion of some interest in relation to joint-stock companies. The learned Judge said, "A company may undoubtedly invest certain persons as directors with authority to manage the affairs of the company, and to sue for them. This company was constituted by deed, and it became necessary to see whether the plaintiffs were directors and had power to sue, for it would not be enough that they were directors unless they had also power to sue. The deed, therefore, should have been produced for this purpose, and also to shew, if such was the fact, that any director becoming a bankrupt ceased to be a director, for in point of law his bankruptcy of itself would have no such effect." The other Judges agreed that the deed must be produced.—*Phelps v. Lyle*, 2 Per. & Dav. 314.

### HASTY BRIEFS.

The following case on another point may be useful, by way of hint to some of our friends:

In a country cause, where issue was joined in Hilary Term, notice of trial given on the 12th of February, and the cause settled on the 16th, the Master disallowed, on taxation of the plaintiff's costs, one half of the charges for the briefs, conceiving that they

had been prepared with unnecessary haste, for the mere purpose of making costs, the commission-day not being till the 6th of March. *F. V. Lee* moved that the Master might be directed to review his taxation. *Tindal, C. J.*—It seems to me that this is very much a matter for the Master's discretion; and I cannot under the circumstances say that he has done wrong in allowing only half the charge for preparing the briefs. The rest of the Court concurring.—Rule refused. *Bucknell v. Boydell*, 7 Scott, 171.

#### NOTICES OF NEW BOOKS.

*Practical Forms and Entries of Proceedings in the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas.* By Wm. Tidd, Esq., of the Inner Temple, Barrister at Law. London, 1840: Saunders & Benning, and H. Butterworth.

THE COMMON LAW PRACTITIONER will welcome the appearance of this new Edition, being the Eighth, of Mr. Tidd's Forms. We are glad to observe that the venerable oracle of Common Law Practice has evidently accomplished this part of his work with unabated care and unwearied diligence. The contents of the previous Editions have been revised and corrected with Mr. Tidd's well-known accuracy, and many new and valuable Forms have been incorporated in their fitting places. The Statutes and Rules of Court which have been promulgated since the former Edition, varying in any respect the form of Legal Proceedings, have been duly attended to both in the Forms and the explanatory Notes and References. The whole work has been arranged with admirable method, and the Notes are, as might be expected, particularly valuable.

The following, amongst other parts of the work, have either undergone considerable alterations since the previous Edition, or are entirely new, and will be found of great service to the Practitioner:

Forms of Articles of Clerkship, Service and Examination of Clerks, and Forms relating to the Admission and Re-admission of Attorneys, &c.—Forms relating to the Service of the Writ of Summons, and the Execution of the Writ of Distringas, &c.—Affidavits to hold to Bail, and Warrant to Arrest, &c.; Proceedings by and against Attorneys, and for the delivery and taxation of their Bills of Costs, &c.—Notices of Motion, Affidavits, and Rules of Court, &c. for setting aside Proceedings, and Proceed-

ings on the Interpleader Act, &c.—Forms relating to Evidence and Witnesses.—Proceedings for the recovery and taxation of Costs.

From two or three of these heads we might be disposed to make some extracts, but the book either already is, or soon will be, in the possession of all our readers whose professional avocations it immediately concerns. The Preface and Index remain to be published, and we wish the venerable author health to complete the latter with his accustomed precision.

#### THE EXAMINATION OF ARTICLED CLERKS.

THE Hilary Term Examination will probably commence on Wednesday the 22d instant, being the first of the ten days within which, according to the general rule of Court, the Examination must take place. We have again to remind those whom it may concern that they should not wait for the circular which is sent as a matter of courtesy (not prescribed by the rule of Court), informing the candidates of the day of examination, and as a matter of precaution subjoining the questions as to due service. The candidates should prepare their testimonials, to be left early in the Term, before the expiration of the first seven days, in order that any defects may be supplied in due time.

We briefly noticed last week the result of the meeting of the examiners on the application of one of the candidates for an immediate re-examination, the Judges having authorized the examiners to proceed in the particular case during the vacation, if they in their discretion deemed it proper to do so.

The candidate, by applying to the Court to dispense with the term's notice, may be examined next term at the usual time.—We think this determination of the Examiners was a prudent one, considered as a precedent, and we have no doubt it was a just one as regards the applicant. It does not appear that he made out a case of failure from actual illness on the day of examination; and if a slight degree of ill health or "nervous timidity," would be sufficient to entitle a party to a second trial the same term, we have no doubt several of the other unsuccessful candidates would lay claim to the like indulgence, and that it would be difficult for the examiners at any future time to resist the importunities of the friends and relations of those who did not obtain their certificates.

We hear from several quarters, that it had become a subject of remark amongst

many of the young men preparing for examination, that there was nothing to apprehend regarding the result, and therefore, small pains were sufficient to pass the ordeal. Now, whatever difference of opinion may remain, if any, on the utility of the examination, it is unquestionable, that so long as it continues, it should be effective. We have no notion that it will be made too severe, and it will be generally admitted that it ought not to be too lenient. It is very probable that the recent appeal, terminating as it has, will produce much good.

#### **ON THE LAW AS TO MARRIAGES ABROAD BETWEEN ENGLISH SUBJECTS WITHIN THE PROHIBITED DEGREES.**

This present article has been written at the request of several country readers, in the hope of directing the attention of the profession to the necessity existing for some further legislative provisions on the subject.

WHATEVER may be the opinion entertained of Lord Brougham's attainments as a lawyer, and his qualifications as a judge, it is impossible to withhold our admiration of the mode with which he has from time to time dealt with some of those mingled questions of law and jurisprudence to which he has always evidently had so much satisfaction in addressing himself. In our estimation, indeed, it is upon questions of this sort that both he and Lord Lyndhurst have most distinguished themselves; and certainly the two ex-chancellors are those in particular among the eminent lawyers of the House of Peers, that the profession looks to in cases of conflict between the laws of different countries or of different parts of our own country, especially between England and Scotland, and from whom it expects the initiation of measures to reconcile the great difficulties arising from this source. In no branch is this conflict so remarkable as in the law relating to marriage; and on no other subject do we recollect any legal prelections of the two learned Lords we have just named, more interesting than those they have given in two recent cases on the marriage law, to which we shall presently have to advert.<sup>a</sup> Of the intricacies of this subject, and of the perplexities and misfortunes to which it gives rise, it must be acknowledged, too, that the essay and speech named at the foot of this article<sup>b</sup> contain a most interesting,

<sup>a</sup> *Birtwhistle v. Vardill*, and *Warrender v. Warrender*, both in 9 Bligh's Rep.

<sup>b</sup> Discourse on the law of Marriage, Divorce, and Legitimacy; and Speech on a proposed Scotch Marriage and Divorce Bill. By Lord Brougham. Lord Brougham's Speeches, vol. 3, p. 431, &c. 1838.

The present article may be considered as a review of this Discourse, and also of the Commentaries on Colonial and Foreign Laws, and

vigorous, and luminous exposition; and also that the measure of remedy proposed, if not altogether sufficient, is one deserving of great respect and consideration.

In the present article it is not our intention to follow his Lordship through the three branches into which he has naturally divided his subject—marriage, legitimacy, and divorce, but almost entirely to confine ourselves to the first, and even to a part of the first of these branches; and to discuss the law as affected by Lord Lyndhurst's Act of 1835, rendering void marriages which were before only voidable—to state some of the mischiefs arising from this part of the law, and the evasions of it still practised; and to point out some legislative remedies which it seems to us the evils growing up under the new state of the law require. Before leaving Lord Brougham's proposed measure, we may as well mention, however, that it would, we think, have been better divided into three measures, one addressed to each branch of the subject; and also that, as at present framed, it would be almost ineffectual from being altogether confined to the mutual bearings of the English and Scotch Marriage Laws on each other, and not embracing the cases, now so common, of marriages solemnized on the continent to evade the operation of our own very peculiar matrimonial regulations.

It is pretty well understood, and we believe accurately, that Lord Lyndhurst's Statute of 1835 was directed to the cases of a nobleman of high rank, an attack on whose marriage with the sister of a deceased wife was feared, and of some few other individuals whose names are well known, and who were similarly circumstanced. Though of course nothing could be more natural, or less objectionable, than that parties feeling, in their own persons, the mischievous effects of the then existing law as to voidable marriages, should be the moving parties to a change; yet it is certainly to be lamented that measures professedly enacted on public grounds should so often have, in their origin, a personal reference to some individual case. The law in such a case, necessarily is more imperfect in its future bearings and operations. If a law be really started for some personal and individual purposes; to quiet, for instance, the title of the son of the Earl of A., or the conscience of the Duchess of B., it is impossible that its workings on society and on international rules can be so fully considered

their Conflict, by William Burge, Esq., Q. C. Vol. I, Chaps. 2, 3, 4, 5, and 8. 1838; and of the Act 5 & 6 W. 4, c. 54, to render certain Marriages valid, and to alter the Law with respect to certain voidable Marriages.

c Seeing, as his Lordship has so clearly, the weight and extent of the evils to which his measure was addressed, why has he been content merely to carry in and print a bill in 1835, and to do nothing more? Can the mere delivery of a speech in 1835, and the printing it with a little prefatory matter in 1838, be enough to satisfy Lord Brougham's mind that he has done his duty to such a subject?

as they should. The marriage law, of all branches of law, has been peculiarly unfortunate in this respect; for almost all the acts on this subject in the statute book, if their secret history could be traced, would from the earliest of them, be found to have had much of personal reference in their origin. There being but little consideration how far laws of this sort are adapted to the state of the public mind,—as a consequence, when passed, they are looked upon like the revenue laws, as having been made to be evaded. Indeed *here* evasion is actually allowed by act of parliament: and all the wholesome provisions for the protection of minors and their fortunes, and for the prevention of clandestine marriages, may, by express authority of the law itself, be broken through by taking a post carriage over the Tweed, or a steamer across the straits of Dover. Now any law on any subject systematically disregarded by the public, has beyond doubt a very bad moral tendency on the public mind.<sup>d</sup> The mere dead-letter-law brings a mischievous ridicule on law in general; but enactments, though good perhaps in the abstract, on subjects so connected with the moral and religious feelings of men, as that under consideration, if so far against the public sentiment as to be constantly broken, have an effect on the national character and tone of public principle, deeply and widely detrimental. No such law should be enacted without full consideration; nor should any bias from personal events be allowed to bear upon it: and when enacted, (and it is to this point the present article will, so far as it may trench on the province of jurisprudence, be principally addressed) it should be a *strong* law, and not one nugatory, and by common consent to be broken without the slightest penalty. But if this be the *desideratum*, the law of marriage will appear to be everything but what it should be.

On religious and moral grounds the marriage law enacts that which the religious and moral feeling of the country does not countenance, which its every day practice disregards, and of which the most easy evasion is, as we shall proceed to shew, allowed: and besides the case of evasion, the only *legal* penalty attached to the clearest infringement, is one which a simple testamentary disposition will remove. It expects to rest for its sanction on a *moral* penalty; and this, as we have said, the feeling of the

<sup>d</sup> In our view, perhaps the greatest, though least appreciated good to arise from the contemplated change in the Post Office regulations, will be the removing the cause of a breach of law so systematic as to be practised even by the most religious and scrupulous, as well as by all the rest of the country. It would seem strange to call the illegal conveyance of letters thieving. But if the law makes it a crime, why is it not? It is evident these disregarded rules break down the wall in men's minds between right and wrong; and this remark is much more applicable to the subject we are on, than to the illegal carrying of letters.

community will not, after all, impose. Marriages within the prohibited degrees of affinity, and between connections by affinity of the nearest kind, are of every day occurrence. The marriage of a sister of a deceased wife has not been stopped by the late act, and we believe cannot be stopped even among the higher classes; among the middle they are daily taking place; among the lower they have long been the commonest marriage which a widower with children makes, and the late act has made no kind of difference to the custom. Marriages between parties connected by affinity, but in remoter degrees, are less common, though by no means uncommon, and certainly unobjectionable, at any rate, except in point of taste. The case for which the Registrar General was taken to task last session, was a curious instance of such a marriage. It was that of a man marrying his own grandmother, as she was called. An illegitimate son married the young widow of his grandfather, a woman of his own age, the marriage being, we have been assured, entered into at the particular dying request of the deceased husband. The registrar, by some mistake, considered the marriage was not prohibited. Had the wife been a great aunt by consanguinity, the husband's grandmother's own sister (perhaps not a very probable case) or had it been the case of a man marrying his great niece,—though here there would have been a very objectionable connection by blood,—the marriage would have been good. Indeed, with respect to the marriages between persons nearly related by blood, did the feeling of the community allow,—and such marriages are greatly less frequent than those which we are more particularly treating of in this article,—it might well deserve consideration if some legislative obstacle should not be interposed: At present, if two brothers marry two sisters, their issue may intermarry, though certainly there are strong physical reasons why it should not be so, and we should say stronger moral reasons than in the cases of affinity—certainly than in those remoter than a deceased wife's sister. A widower and widow, each with young children, intermarry. The children are brought up together as brothers and sisters; yet with all the same moral reason prevailing as in the case of actual relationship, they are not under the slightest legal restriction from marrying. A man, too, may marry his wife's sister-in-law, (*i. e.* her brother's widow) though this is almost as near a connection as the prohibited one.

We shall not, however, discuss the much debated question, whether these marriages are wisely discountenanced or not, further than to say that marriages which violate no physical laws, which are rather marriages of quiet calculation as to the future welfare of children, than marriages of passion—which

<sup>e</sup> We have heard from eminent medical authority, that the prevalence of albinos amongst the lowest classes, so remarkable in some densely crowded populations, is attributable to such connections as this, and indeed, we are sorry, to say to more objectionable ones.

have been so widely contracted, and that necessarily by persons (widowers) past the average age at which matrimony is contracted, require at least very clear reasons on which to ground their prohibition. The circumstance that Henry the 8th enacted the law soon after getting rid of his wife, on the ground that she had been his brother's widow,<sup>f</sup> says but little for it; and now that marriage has become, in the eye of the law, to all intents a civil rite only, a misconstruction of Leviticus,<sup>g</sup> or a reference to the later canons of the Romish Church,<sup>h</sup> mere inventions to make a market for indulgencies, will not be enough to shield it from scrutiny. On this latter ground, indeed, we should much lament to see it supported. Such arguments would only raise up an outcry from the Dissenters, always of course glad of an opportunity to attack the canons of the Church; and it would be said as of church rates, and really with a shew of justice, that they

<sup>f</sup> See Hume, ch. 30, and his observations on the lawfulness of these marriages. See, too, Shakespeare's account of the matter:

*Chamberlain.*

It seems the marriage with his brother's wife,  
Has crept too near his conscience.

*Suffolk.*

No; his conscience  
Has crept too near another lady.

*King Hen. VIII. Act 2, sc. 2.*

The objects of this periodical, and our own time and space, prevent our going into the history of these opinions and laws, otherwise the transition from the moral views of the Athenian, who took in marriage "sororem suam germanam, non magis amore quam more ductus" [Corn. Nep. vit. Cimon], to those more modern, we suppose more enlightened ones, which consider a marriage with a brother-in-law's granddaughter right, but with his daughter incest, would be a curious story of odd speculation. An account of the recent writings on this subject, such as those in Hen. VIII's day, and those again of the celebrated author C. Blount, who shot himself in 1693, because the Archbishop of Canterbury persuaded his deceased wife's sister it was criminal to marry him, [See Biograp. Brit. & Bayle, art. Appollonius of Tyana, n. I.] and of other subsequent writings down to the present time, both here and in America, not overlooking the parliamentary speeches of 1835, would be valuable, though for purposes other than ours.

<sup>g</sup> The prohibition in Leviticus, c. 18, v. 14, is only of a marriage of a wife's sister during the wife's life. Judge Story's Conflict of Laws, p. 106, note. Polygamy was then allowed. The Jewish law required a brother to marry his brother's widow. See the story of Ruth in the Old Testament, and the parable of the woman marrying seven brothers one after another in the New.

<sup>h</sup> "Certe, canonibus antiquissimis qui Apostoli dicuntur, qui duas sorores alteram post alteram duxisset aut ἀδελφῶν id est fratrius aut sororis filiam, tantum a clero arcetur." Grotius de Jure, lib. 2, c. 5, s. 14.

are regulations well enough for the Church itself, but infringement on the liberty of conscience of all without its pale. On the continent, not only are these marriages generally allowed, but even very near connections of blood; uncle and niece, for instance, constantly intermarry,<sup>i</sup> and from the great advisability of assimilating the marriage laws of civilized nations, the legislature ought certainly to have paused when bringing in a *quia timet* act for the benefit of past marriages, lest it widened more the breach between our own laws and those of the continent. Most professional readers of experience will probably be well aware that since the last act, very many of these marriages have taken place, and are taking place, abroad. Many, like ourselves, may probably have been more than once consulted on the subject,<sup>j</sup> and our wish and object is that the law should be made clear for the future, and that if these marriages are to be prohibited, it should be put beyond question that between British subjects, they are bad wherever they take place.

We will now come to the question which we have proposed to discuss, and proceed to consider the points on which the validity or invalidity of these marriages turn. Before the late act, (the 5 & 6 W. 4, c. 54,) marriages, as it is well known, against the common law, were voidable only: the late act declares that for the future they shall be void. Shortly after this act, some ecclesiastical lawyers of great eminence doubted whether this provision might not prohibit marriages of British subjects within the prohibited degrees of affinity, though taking place in a foreign country, where such marriages were good. We had before us an opinion of this sort very soon after the act passed. However, since that time we believe it has been pretty generally considered that a good marriage abroad will be held good here for all purposes. We say for all purposes, because it has been incorrectly imagined from the case of *Birtwhistle* and *Vardill* (5 B. & C. 438, and 9 Bligh. N. R. 44) that a marriage may be here good for the

<sup>i</sup> Such marriages are far from uncommon in Poland and in France, amongst the highest classes of the nobility. In France, the Crown may dispense with the law against marrying a niece. Art. 163 & 164. One of Goethe's plays turns on an attachment between an uncle and niece, the mutual position of the parties being chosen for convenience to his plot, and certainly not at all as an uncommon relation for such parties.

<sup>j</sup> We have been much surprised to find how little the parties have been affected by the intimation that their marriage would be questionable. About ten or twelve cases have come to our personal knowledge since the last act; and in every one we believe the marriage has been solemnized. In none, as far as we have known, has it been any thing but a quiet and deliberate engagement between the parties. In most, there has been a young family to be taken care of. Most of the parties have been in the upper ranks of the middle classes.

purpose of title to personality, but not for that of title to land. This, however, is evidently a mistake. The very interesting case referred to never pretended to assert the validity of a Scotch marriage, but only the application to English real estate of its legal effect in legitimizing previously-born issue of Scotch parents, domiciled there. This case is now under re-consideration of the Judges, after a re-argument before the House of Lords, ordered at Lord Brougham's instance. The reports of Lord Lyndhurst's and Lord Brougham's speeches in moving the re-argument will be found in Bligh, and will amply repay the perusal. The case was re-argued last June. We are not aware what transpired on this re-argument, but look with great interest to its decision.\* This case is so closely connected with the subject we are about to examine that a few remarks upon it will be proper.

The decision proceeds on the well-known rule of law, that *haeres est quem nuptiae demonstrant*. It seems to be approved of by Judge Story in his masterly work on the Conflict of Laws.<sup>1</sup> We had ourselves been formerly satisfied with the ground on which it proceeded. On reconsidering the subject, however, with reference to the present article, we have been led to entertain great doubts; and if the principle of the Scotch appeal decision we are about to state is to be upheld, we are at a loss to see how the doctrine of the Common Law Judges can stand. We quite admit with Judge Story that every country may in its own ideas of

\* One story connected with this re-argument, perhaps rather characteristic of the learned and eloquent Lord last named, has reached us. The case at law had decided that the legitimated Scotch heir could not inherit in England. Lord Brougham we hear, in opening the case, stated that he had been counsel in the first argument of the case for the English heir, and had, against his own private conviction, succeeded for him; the Scotch heir's counsel not knowing the real points of his case. That now he belonged to their Lordships, he was bound to speak his real views, and to try to get the cause set right. Lord Brougham was counsel on the first argument, but (and see Bligh, 34 for this) he was counsel for the Scotch heir, not the English.

<sup>1</sup> We are no great admirers of the general productions of American literature. But, among legal writers, some of their text-books deserve a very high rank. At the very head of them should be placed the very able and learned author we have just quoted. His other works are of the highest order. We have heard one of the most eminent of our equity draftsmen mention that he considered his Treatise on Equity Pleading, &c. as the best for even English students, and that he always placed it in his pupils' hands. We are happy to have, in the views taken in this article, the support, as we believe we have throughout, of one so judicious, acute, and profound as Dr. Story.

convenience and propriety, lay down rules militating against the regulations of other nations, with reference to any contracts, especially those of marriage and divorce; and that such other nations ought to recognize these rules, as in force in that country. The laws respecting the freedom of slaves when in England, are an instance. Before the late Emancipation Act, nothing was more common than litigation in our Courts about the personal property in slaves in the Colonies, who, if they had once touched our shores, would have been held free. We adjudicated upon rights existing elsewhere, which we yet declared to be abhorrent to our law to allow the existence of here. We recognized the law as existing abroad, and applied it to the adjudication of property abroad, on the narrow ground that it was the law there, and without setting up any principle which could militate against our own rules.

But if we once adopt a general principle applicable to international law, and apply it under one set of circumstances, we must apply it under the converse set of circumstances. The same principle must be carried throughout. This has in part been done in the present case. It has been decided by the House of Lords on appeal in a Scotch case (*Ross's case*, 4 Wilson & Shaw), that the illegitimate son of a Scotchman, domiciled in England at the birth, could not be legitimized for Scotch inheritance by a subsequent marriage in Scotland; thus laying down a rule that, even with reference to a country where legitimation *per subsequens matrimonium* was allowed, the *status* of bastardy attached to a man by the circumstance of his domicile of birth being in a country where the legitimation *per subsequens matrimonium* was not allowed. This principle has been also acted upon by the Lords in the Strathmore peerage case, and in another Scotch case. But if this principle be true, so also should the converse; and in *Birtwhistle* and *Vardill* the *status* of bastardy being, by the domicile of origin, removable by the prevalence of the law as to subsequent marriage, in the country of birth;—it should be held removed with reference to a country where that law does not prevail. The House of Lords might in these Scotch cases have taken up the narrow ground if they had pleased. They might, even if they had been sitting not as Scotch lawyers, could such a case have arisen, have set up the *comitas gentium*, and declared that they should follow the rule of Scotch law, which plainly was to treat all issue, wherever born, as rendered inheritable to Scotch property by a subsequent marriage; but they chose to proceed on a broader principle, and to lay down a rule of *status* of birth applicable equally to all countries. Sitting even as Scotch lawyers they said, "Having been born in England his bastardy is ir-removable." When they had laid down this broad rule, to be consistent, they should go through with it, and say, sitting as English lawyers, "Having been born in Scotland his bastardy is ir-removable." We do not say this

rule as to *status of birth* is right. With Judge Story we greatly doubt it. But we only say, that having been solemnly established, and three times acted upon in the High Court of Appeal, it must be acted upon throughout, and that if so, the judgment in *Birtwhistle and Wardill* must be reversed.

This converse principle has been directly followed in France. (1 Burge, *Confl. of Laws*, 106.) It has there been held, that an English subsequent marriage was sufficient to allow a French born bastard to inherit.

The rules as to legitimization *per subsequens matrimonium*, where they prevail, proceed from the law there viewing the subsequent marriage as an acknowledgment that the pre-existing state of cohabitation had been preceded by a previous marriage, of which the testimony was lost. The courts there in substance declare in these cases that there has been a marriage, good by the *lex loci* previous to the birth, and our law here is, that we are to recognize the decision and declaration of the *lex loci* as to the time and validity of a marriage. We cannot, therefore, concur in the satisfaction with which Mr. Burge lays it down, "That it is an essential quality inseparably incident to land in England, that it cannot descend on a person born before the marriage of his parents, although he may be for other purposes rendered legitimate by their subsequent marriage."<sup>m</sup> Any way, the decision of this case will be watched by all attending to these subjects with great interest. If it be affirmed, not only Scotch and English estates will be severed, but Scotch and English dignities, and it will be in the power of Scotch peers having English titles as well as Scotch, to make two of their children noble—the Scotch estates and title going *per subsequens matrimonium* to what we should here look on as the *pseudo* elder son. Some of Lord Brougham's remarks in the essay above alluded to apply strikingly to this subject.

"The civil law, which allows legitimization *per subsequens matrimonium* being received in Scotland, while it was rejected in the celebrated answer of the barons and prelates in the statute of Merton (Hen. 3,) *nolumus leges angliae mutari*, if a person born before the marriage of his parents, in Scotland, claims English land or honours, he has been held disentitled; though in Scotland he has an indefeasible title to inherit both. Thus, he is a bastard on one side of the Tweed, and legitimate on the other, and that although his parents were *bond fide* domiciled in Scotland, nay, although they had never been in England. The like happens if he claims personality in England, he can obtain this succession with certainty, as if he were legitimate, while he cannot inherit land; so he can inherit all beneficial encumbrances on land, as mortgages, with all the remedies incident thereto, but one acre of the land as tenant, he never can inherit. Thus, even where there is no collusive act, nothing colourable, nothing done in *fraudum legis*, this *confictus legum* makes the same individual legitimate and bastard at the same time; legitimate

in one part of the island, bastard in another—legitimate when he claims personal, bastard when he claims real estate—legitimate or bastard accordingly as he resorts to the Courts on the one side or other of Westminster Hall."<sup>n</sup> We may suggest a difficulty which may easily arise under such of our marriage settlements or uses as allow an exchange by the tenant for life of lands or property in any other part of Great Britain. By such an exchange, if this case stands, a tenant for life might vary the descent of the settled estates, and if a peer, sever the lands from the title.

[*To be continued.*]

### THE PENNY POSTAGE.

The following are the new regulations of the Lords of the Treasury, relating to Inland Letters, as extracted from the London Gazette of the 28th December:

"We hereby fix and limit the following scale of weight of letters to be transmitted by the Post, and we subject such letters, on and after the 10th day of January, 1840, to the following rates of postage (that is to say):

On every letter, not exceeding *half an ounce* in weight, there shall be charged and taken one rate of postage.

On every letter, exceeding half an ounce, and not exceeding *one ounce* in weight, there shall be charged and taken two rates of postage.

On every letter exceeding one ounce, and not exceeding *two ounces* in weight, there shall be charged and taken four rates of postage.

On every letter, exceeding two ounces, and not exceeding *three ounces* in weight, there shall be charged and taken six rates of postage.

And on every letter, exceeding three ounces, and not exceeding *four ounces* in weight, there shall be charged and taken eight rates of postage.

And for every ounce in weight, above the weight of four ounces, there shall be charged and taken two additional rates of postage; and *every fraction of an ounce*, above the weight of four ounces shall be charged as one additional ounce.

And we order and direct, that no letter, exceeding *sixteen ounces* in weight, shall, in any case, be forwarded by the Post between places within the United Kingdom, except addresses

<sup>n</sup> We believe England is almost the only European country in which marriage is not allowed to have this retrospective effect. The difficulties pointed out by Lord Brougham, shew that some legislative remedies are wanted to set this clear. We cannot admit that the difficulties arising from questionable marriage or legitimacy, may properly be left as we leave mere pecuniary questions, to be settled as they arise. Happiness of mind and position in society, call for immediate attention to such matters.

to her Majesty, Parliamentary Petitions, printed votes and proceedings in Parliament, letters addressed to, or despatched by any of the Government offices or departments, or any public officer having now the privilege of franking, by virtue of his office, *deeds*, if transmitted under all such regulations and restrictions as the Post Master General shall from time to time appoint, and letters to and from places beyond the seas.

And we hereby fix and limit the following rates of postage to be paid to her Majesty's Postmaster General for the use of her Majesty, on letters posted and transmitted by the post, on and after the tenth day of January, 1840; and we order and direct the same to be charged and paid accordingly: that is to say,

*Inland Letters.*

On all letters, *not exceeding half an ounce* in weight, transmitted by the post, between places within the United Kingdom—(not being letters sent to or from parts beyond the seas,) there shall be charged and taken one uniform rate of postage of *one penny*, without reference to the number of sheets or pieces of paper, or enclosures of which the same may be comprised, or to the distance or number of miles the same shall be conveyed; and that on all such letters, if *exceeding half an ounce* in weight, there shall be charged and taken progressive and additional rates of postage, (each additional rate being estimated at one penny,) according to the scale of weight and number of rates herein before fixed and declared; provided, that such postage of one penny, and such progressive and additional postage be *pre-paid* at the time of posting such letters: but, in case such postage on any such letters shall not be pre-paid when posted, there shall be charged on such letters a postage of *double* the amount to which such letters would otherwise have been liable under this present warrant."

## NOTES OF THE VACATION.

### BANKRUPTCY COMMISSION.

SOME part of the evidence taken by the Bankruptcy Commission has been given in *The Times*. The Report of the Commissioners, we understand, will be ready before the meeting of Parliament. We hope soon to put our readers in possession of their suggestions.

### PRIVILEGE OF PARLIAMENT.

This question must engage the immediate attention of the House of Commons. As a point of privilege, we conceive, it takes precedence, if the House chooses, of the consideration even of the Queen's Speech.

### THE SPECIAL COMMISSION.

The whole proceedings of the Commission have been reported so fully in the newspapers, that it is needless for us to say any thing. On the close of the Commis-

sion, we shall probably state its legal results, which promise to be highly important. The general law on the subject, we have already given, (*ante*, p. 97) and we gave the charge of Chief Justice *Tindal* in the Monthly Record for December.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### COVENANT.—SPECIFIC PERFORMANCE.—DEMURRER.

*By articles of agreement A. covenanted with B. his wife, and C. his trustee (who thereby agreed to covenant to indemnify A. against his wife's debts) to pay 1000*l.* to D. for the wife's use, and also to secure to B. and his executors an annuity during the wife's life for her use, by a charge on A's. real estates or an investment in the funds or by other means. On a bill filed by B. C. and D. against A. and trustees of his real estates, alleging that he refused to perform his covenant, although he had sufficient means to satisfy it, and charging that he and his trustees were disposing of his real estates in fraud of the covenant, and praying specific performance, the Lord Chancellor overruled a demurrer by the trustees, holding that at the hearing of the cause, on the facts alleged in the bill, the Court would give effect to the covenant on the real estates.*

#### PLEADING—PRACTICE.

*It is irregular to allow a demurrer in part, and disallow it in fact.*

*It is too late to appeal from an order to amend after the amendments have been made and submitted to by the appellant's demurring to the amended bill, without having applied to the Court.*

The original bill was filed by Colonel Paterson and Mrs. Wellesley, by the said Colonel Paterson, her father and next friend, against W. P. T. L. Wellesley and others, for specific performance of articles of agreement, dated the 21st of June, 1834, and made by and between Mr. Wellesley of the first part, Mrs. Wellesley of the second part, and Colonel Paterson as her trustee, of the third part, by which, after reciting that in consequence of unhappy differences between Mr. and Mrs. W., they had agreed to live separate. Mr. Wellesley covenanted to pay 1000*l.* to Mr. Bucknell's solicitor for Mrs. W. for her separate use, in three payments, the last of which was to be in November then next ensuing; and that he would, on or before the 1st of February, 1835, well and effectually by a charge on freehold estates of inheritance in England or Wales, or by investment of an adequate sum of money in the public funds of Great Britain, or by some other means as would be in his power, secure payment of an annuity of 1000*l.* to Colonel Paterson, his executors and administrators, by equal quarterly payments as therein mentioned, in trust during the life of Mrs. Wellesley, for her separate use. The

articles contained a stipulation by Colonel Paterson, that he would covenant to indemnify Mr. Wellesley against the wife's debts. The bill stated that only 850*l.* of the first mentioned 1000*l.* had been paid, and that Mr. Wellesley absolutely refused to pay the residue, and to secure the said annuity, though often applied to for that purpose; and it then, after referring to settlements made on Mr. Wellesley's marriage with his first wife, stated a deed dated the 14th of December, 1826, by which Mr. Wellesley and his eldest son, who had then attained his age of twenty-one, conveyed certain freehold estates comprised in the said settlement, and in which Mr. Wellesley had a life interest, remainder to his eldest son—party to said deed, and defendant to this bill,—in the counties of Essex, Hertford, and Southampton, unto Messrs. Wright and Greenley,—also defendants to the bill—upon trust by sale or mortgage to raise 462,000*l.* for the purpose of discharging incumbrances affecting the same, and paying certain scheduled debts of Mr. Wellesley. The bill alleged that Mr. Wellesley had, by this last mentioned deed, acquired a power to jointure his present or any future wife to the extent of 1500*l.* a-year, by a charge on the estates comprised therein, and that he had sufficient estates in England and Wales, and had ample means to fulfil his covenant with the plaintiffs; and the bill charged that Mr. Wellesley had entered into several contracts charging the whole of his freehold property to the full extent of its value in fraud of his said covenant; and the bill, after charging collusion with the other defendants, prayed that it be declared that the said covenant gave the plaintiff a *lien* on said estates for payment of said annuity, and for an injunction to restrain Mr. Wellesley and his son, and the said trustees, Wright and Greenley from disposing of the said estates, or parting with the money already raised on the security of them, until the said annuity should be first secured to the plaintiff; and it prayed for payment of the arrears of the first mentioned 1,000*l.*, and of the annuity, and that Mr. Wellesley might be compelled specifically to perform his said covenant.

Messrs. Wright and Greenley demurred to the bill for want of equity, and for want of parties, on the ground that Mr. Bicknell and the incumbrancer on the estates ought to be made parties to the bill.

The Vice Chancellor allowed the demurrer for want of parties, but was of opinion that Mrs. Wellesley had an equity for specific performance of the covenant, and therefore disallowed the demurrer for want of equity, and gave her leave to amend the bill as to parties, &c.

The bill was accordingly amended last July. To the amended bill the said defendants, the trustees, put in a demurrer similar to the former, and they also appealed in September last against the Vice Chancellor's order, so far as it disallowed the demurrer for want of equity and gave leave to amend the bill.

Mr. Wigram and Mr. Toller, were heard in support of the appeal.

Mr. Jacob for Mrs. Wellesley, was stopped by—

*The Lord Chancellor.*—Directing the attention of counsel to the irregularity of the Vice Chancellor's order, he said there was but one demurrer to the bill, but the order allowing one part and disallowing the other, was drawn up as if there were two demurrs. In point of practice the demurrer must be considered as allowed. The Vice Chancellor gave the plaintiff leave to amend the bill. That was in July last. The bill was amended by adding parties, and the trustees demurred to the amended bill in September, and by that act they acquiesced in the order to amend. The present motion was for a reversal of the order to amend; but for the sake of regularity of practice, it was quite impossible that the Court could now discharge that part of the order which gave the plaintiff leave to amend, and in which the plaintiff, and defendants also had acted. The appeal was quite unnecessary; as to the demurrer his Lordship had an impression that there was a recent case precisely applicable: *Vernon v. Vernon*.<sup>a</sup> Finding that the appeal in that case had been brought unnecessarily under somewhat similar circumstances, he dismissed it with costs. In the present case, which was a much stronger one, he must also dismiss the appeal with costs.

The demurrer to the amended bill now came on to be argued before the Lord Chancellor.

*Mr. Wigram and Mr. Toller.*—The demurring defendants were mere trustees to raise money on the estate conveyed to them for the purpose of discharging incumbrances and paying debts. The object of the son of Mr. Wellesley in joining in the deed of December, 1834, thereby cutting off the entail, was to facilitate the raising of the money; but he was not contributing any thing out of his own estates, which remained to him free from incumbrance. The covenant to pay the 1000*l.*, and the annuity of 1000*l.* for Mrs. Wellesley's use, if not a strictly personal covenant, was at least a general covenant, and studiously avoided to give Mrs. Wellesley or her trustee a *lien* on the estates. The demurring defendants did not at all deny the moral obligation on Mr. Wellesley to provide handsomely for his wife. The contract might be enforced against his person, and he might be obliged to find lands or other means to give the security, but no *lien* could be enforced on those lands conveyed to the trustees. The authorities on this subject were *Fremoult v. Dedire*,<sup>b</sup> *Williams v. Lucas*,<sup>c</sup> *Gardiner v. Lord Townsen*,<sup>d</sup> *Ravenshaw v. Hollier*,<sup>e</sup> *Westmeath v. Westmeath*,<sup>f</sup> *Garrurd v. Lord Lauderdale*,<sup>g</sup> Sugden's *Vend. & Pur.* 2d vol. 103, (ninth edition) and *Deacon v. Smith*,<sup>h</sup> (which last case, though cited on the other side, was in favour of the demurring defendants,) *Barrington v. Evans*.<sup>i</sup>

<sup>a</sup> 2 Myl. & C. 167.

<sup>b</sup> 1 P. Wms. 429.

<sup>c</sup> G. Cooper, 38.

<sup>d</sup> 1 Jacob, 126

<sup>e</sup> 3 Atkins, 322.

<sup>f</sup> 2 Cox, 160.

<sup>g</sup> 7 Sim. 3.

<sup>h</sup> 3 Sim. 1.

<sup>i</sup> 3 You. & C. 384.

This was clearly a covenant against the person, and could not be a *lien* on specific estates. The plaintiff did not suggest in her bill that Mr. Wellesley was not liable to perform his covenant, and that therefore she claimed the fixing of it as a *lien* on the land. Had not Mr. Wellesley a right, out of the sum to be raised by the trustees, to invest so much in the funds as would secure payment of the annuity?

*Lord Chancellor.*—The bill alleges that he refuses to give any security for the payment of the annuity. She might as well claim a right to restrain him from selling his horses and carriages as from raising money on his estates. Mr. Wellesley had no estates of inheritance when the deed was executed, nor has he any now. He was merely tenant for life.

Mr. Jacob, Mr. Richards, and Mr. Wilcocks for Mrs. Wellesley, relied on the cases *Hould v. Breary*,<sup>a</sup> & *Deacon v. Smith*,<sup>b</sup> and others, which are mentioned in the judgment.

The *Lord Chancellor*, having taken time to consider the case, gave judgment as follows:—The demurrer was put in by two defendants, who are trustees of property over which the defendant, Mr. Wellesley, obtained a power of charge, by a deed executed by him and his son to the demurring defendants, in December, 1834. The question is, whether the bill states such a case against them as would entitle the plaintiff, according to her statement, to a decree at the hearing, or whether the defendants can now come to the Court to say that, according to her own statement, the plaintiff has made no case against them. The title of the plaintiff arises on the deed of separation of June, 1834, at which time Mr. Wellesley was only tenant for life in the estates, over which by the subsequent arrangement between himself and his son, as alleged in the bill, he obtained a power of jointuring his present or any future wife to the extent of 1500*l.* a-year. It was contended for the plaintiff that this arrangement was in part performance of the deed of June, but that proposition was denied on the other side. The bill alleged that Mr. Wellesley refused to perform his covenant on the ground of the irresponsibility of the wife's trustee to indemnify him against her debts, and it then states a negotiation between the solicitors on both sides, and that Mr. Wellesley's solicitor wrote that he accepted the proposition made to him to substitute another trustee for Colonel Paterson, and that he would prepare the deeds for that purpose; and it then states a subsequent refusal. The bill then states that the other defendants were trustees under the deed of December 1834, and out of the sum of 462,000*l.* to be raised out of the estate, were to pay debts and discharge certain incumbrances and pay over the surplus to Mrs. Wellesley, but that they were about paying what they had raised over to him, and charging the estates with further sums. The bill clearly stated the acquisition of property by Mr. Wellesley in 1834, subsequently

to the covenant, sufficient to enable him to perform that covenant, and that the defendants are trustees of that property, and that instead of applying the powers given to them as such trustees in discharging the estates of incumbrances in pursuance of the deed of December 1834, they were proceeding to raise money upon the estates to remit the same to Mr. Wellesley. The bill stated a covenant to charge land by a certain day, and the purchase of lands in part performance of that covenant; it states a promise after the acquisition of the land to perform the covenant, and then a refusal to perform, and acts tending to defeat the security of the annuity on the lands so acquired. If the Court should be of opinion that upon these facts being proved at the hearing it had no power to act on those lands, then the demurrer was to be allowed. But if the Court should be of opinion that it has power to act on the lands, then the trustees are properly made parties, and their demurrer must be overruled, because upon the plaintiff's statement, the facts being established, she will be entitled to a decree against the defendants. If a vendor, after contracting to sell property, will so deal with it as to disable himself from performance of his contract, this Court will act upon the property, and will not allow a party to disable himself from performing his contract. In *Preble v. Boghurst*,<sup>1</sup> Lord Eldon did not doubt the jurisdiction of this Court to appoint a receiver, while it was still uncertain whether the bond in that case affected the lands. If the plaintiff in that case shall obtain a decree for specific performance against Mr. Wellesley, can it be doubted that this Court will act upon this property, of which the demurring defendants are trustees? And if so, are not these trustees properly made parties to the bill? The only ground upon which these defendants can successfully contend that they are improperly made defendants, would be either to shew that the bill must be dismissed as against Mr. Wellesley, or that a decree, if made at all, must be against him personally. But it is clear that the moment the Court declares the plaintiff's right against Mr. Wellesley to have his annuity charged on the lands over which he had a power of charge on or before the first of February, 1835, the defendants, trustees of those lands, will become trustees for the plaintiff to that extent. In *Lyde v. Mynde*,<sup>m</sup> a husband covenanted to charge an annuity on property which he might afterwards acquire upon the death of his wife, who, happening to die leaving him a legacy, the covenant was enforced against him. Mr. Wellesley having contracted by a certain day to secure this annuity by a charge on lands, or investment in the funds, or other means, it became quite immaterial for the present purpose whether that form of words in the alternative gave him an option, or whether he has other lands besides those vested in these trustees upon which

<sup>1</sup> 1 Swanst. 318.

<sup>a</sup> 4 Sim. 505; S. C. on appeal, 1 Myl. & K. 683.

he can charge the annuity, because the bill alleges that he refuses to charge it on any lands, and the Court will not permit him under pretence of exercising an option to evade the performance of his contract. In the case of *Deacon v. Smith*,<sup>n</sup> there was an option, but that did not prevent the Court from acting on one alternative. Now one of the alternatives in this case is to charge lands on or before the 1st of February, 1835, with the annuity. The bill alleges that Mr. Wellesley did acquire lands or a power of charge over lands before that day; and the case of *Lyde v. Mynn*,<sup>o</sup> and the cases there cited, as also *Tooke v. Hastings*,<sup>p</sup> and *Metcalf v. The Archbishop of York*,<sup>q</sup> being, therefore, of opinion that the contract as stated in the bill, and on the case there made, will be enforced by a decree against Mr. Wellesley, and that to give effect to that decree, the Court will act upon the lands over which he had a power of charge in February, 1835, and of which the defendants are trustees; I think their demurrer must be overruled. I do not think it necessary to discuss the grounds of the opinion said to be expressed by the Vice Chancellor on the demurrer before him, or the doctrine of the case of *Freemoult v. Dedire*.<sup>r</sup> The case of *Roundell v. Breury*,<sup>s</sup> the circumstances of which his Lordship stated, seems to be a much stronger case than the one in *Peere Williams*, and more applicable to this; and it was on it that Lord Hardwicke relied in deciding the case of *Deacon v. Smith*, in the third volume of *Atkyns*. The demurrer must be overruled with costs.

*Wellesley v. Wellesley and others*, at Westminster, Nov. 20th, 22d, 23d; and at Lincoln's Inn, Nov. 27th, 28th, 30th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### LUNACY.—CORPORATIONS.—RECODER.

Where an order is made by Borough Justices under the 5 G. 4, c. 71, & 9 G. 4, c. 40, and an appeal is made against such order, such appeal is properly brought before the recorder of such borough sitting in the court of quarter sessions of such borough. The 5 & 6 W. 4, c. 76, s. 105, gives the recorder all the powers of a court of quarter sessions for the county, except in the matters therein specially excepted.

This was an appeal against an order of two justices, made in the matter of a lunatic. The appeal was carried before the recorder of the borough; and the question raised for the consideration of the Court was, whether the recorder appointed under the Municipal Corporation Act, and sitting in quarter sessions, had jurisdiction to hear and determine the appeal.

Mr. Grenes and Mr. Skinner appeared in support of the order of sessions. The 5 G. 4, c. 71, which specially relates to this subject, and on which this order was founded, contains,

in section 6, a provision that the word "counties" there employed, shall include cities, boroughs, towns, &c. possessing separate jurisdictions. All the powers which existed in the case of the ancient courts for which this Court is substituted, are transferred to the recorder's court. The moment the court of quarter sessions is constituted for the borough, it possesses all the ordinary powers of a court of quarter sessions, and becomes the tribunal of appeal from the order of justices within its jurisdiction. The 61st section of the 9 G. 4, c. 40, declares that the word county shall include any city or "town" corporate. Then the whole tenor of the Municipal Corporation Act, 5 & 6 W. 4, c. 76, shews this to be the case. By the 98th section of that act the King is authorized to appoint justices for boroughs, and sec. 101, which defines the power of such justices, expressly excludes them from sitting as justices of the peace at a jail delivery, or in levying a county rate. The exclusion shews that, but for its insertion in the act, they would have had the power to do this. There are other sections which give to the recorder the power of sitting in a jail delivery for the borough, and of exercising all the other powers of the quarter sessions, except that of levying rates. The 105th section gives the recorder cognizance of all matters cognizable by a court of quarter sessions, except the matters therein expressly excepted. One of the matters not excepted is the decision of appeals against such orders: as the case of *The Queen v. The Recorder of Hull*,<sup>n</sup> shews that the recorder of a borough town under the Municipal Act has succeeded to the powers of the quarter sessions except for such matters as are in that statute specifically excepted.

Mr. Smithies in support of the rule.—The recorder now has no more power than the old borough sessions court. The case of *The Queen v. The Recorder of Hull* is not in point; for Hull is a county of itself, which Ludlow is not. The 9 G. 4, c. 40, ss. 46 & 54, relate to the power of appeal against orders made under the authority of that act. The first of these sections gives the appeal in so many words to "the justices of the peace at the next quarter sessions in and for the county;" and the other uses the same words. The 5 Geo. 4, c. 71, s. 4, also shews that it was the intention of the legislature to assimilate these matters to the cases of removals under the poor laws, and to give as in such cases the power of appeal to the quarter sessions of the county only. Now it is clear that the power of declaring a settlement is in no case given to a tribunal of local jurisdiction, but always to the sessions of the county at large. As to the interpretation clause (s. 6.) in the 5 G. 4, it cannot affect this question, for there is no instance of an appeal clause in a statute, being made to depend on the interpretation clause. The provisions of an act relating to a special matter, cannot be affected by those of a general act without the intention of the legislature to that effect be ex-

<sup>n</sup> 3 Atk. 325.

<sup>p</sup> 2 Vern. 97.

<sup>r</sup> 1 P. Wms. 429.

<sup>o</sup> 1 Myl. & K. 683.

<sup>q</sup> 6 Sim. 224.

<sup>s</sup> 2 Vern. 482.

<sup>a</sup> 16 L. O. 220; 1 Will. Woll. & Hodg. 853.

pressly declared. *Williams v. Pritchard*,<sup>b</sup> *Ed-dington v. Borman*.<sup>c</sup> The recorder is a justice of the peace by virtue of his office; he may, as such, with another justice make an order of this kind. It is clear that no appeal on that order would lie from them to the recorder alone. He does not possess all, but only a portion of the power of the courts of quarter sessions. It is manifest therefore that he cannot in this instance exercise the power of the quarter sessions, and that his order must consequently be quashed. *Cur. adv. vult.*

Lord Denman delivered judgment in this case.—The question in this case was, whether an appeal could be allowed under the following circumstances, from the order of the two justices of a borough to the recorder in the quarter sessions of that borough. The 46th section of the 9 G. 4, c. 40, gave the right of appeal where matter of appeal had arisen. The 61st sect. declared that under the description of "any county" should be included any county of a city, county of a town, or town corporate. This was an order made by two justices of a borough, and the appeal was to the recorder in the quarter sessions. Whether or not the appeal to the recorder in sessions would have been sustainable if the old corporation had continued to exist, we cannot doubt that as the law now stands it is at present properly sustainable. The power of the recorder is distinctly stated in the 105th sect. of the Municipal Act, which gives him cognizance of all matters whatever cognizable at county quarter sessions. The recent grant by his late Majesty of a charter to Ludlow makes no difference in this respect, for it does not limit or confine the operation of that act; on the contrary it was made with a view to carry out the provisions of that act. We think therefore that the appeal was properly receivable, and the order of sessions must be confirmed.

*The Queen v. St. Lawrence, Ludlow, M. T. 1839. Q. B. F. J.*

#### VERDICT.—ATTORNEY.

Where there are several counts in a declaration, some of them good and some bad, and a verdict is taken generally, and damages generally assessed, the Court will not permit the plaintiff, by an order of the Judge before whom the cause was tried, to enter the verdict for the plaintiff on the good counts, and on the others for the defendant, but will award a *venire de novo*.

Case for slander.—1st count, that the defendant, intending to injure the plaintiff in his business as an attorney, in a certain discourse which he then and there had of and concerning the said plaintiff in the way of his said profession and business, spoke of and concerning the said plaintiff as such attorney as aforesaid, the following words, &c. The 2d, 3d, and 4th counts averred other colloquia, and

other words spoken of the plaintiff "as such attorney as aforesaid;" 5th count, that the defendant further contriving, &c. (without any averment of a *colloquium*) spoke of and concerning the plaintiff the following words: "here is to honest lawyers; will you drink to honest lawyers? I say honest lawyers, but d—n humbug;"—(omitting the averment that they were spoken of him as an attorney) "thereby then meaning it and intending it to be understood that the said plaintiff was and is a dishonest attorney." The 6th and 7th counts averred other colloquia, and other words spoken of the plaintiff by the defendant, "thereby meaning that the plaintiff was guilty of an offence punishable at law." Plea—Not Guilty to each count. At the trial of the cause before Mr. Justice Park, at Warwick, in the Spring Assizes of 1838, the jury returned a verdict for the plaintiff, damages 15*l.* This verdict was entered generally. The defendant obtained a rule *nisi* to arrest the judgment, or to have a *venire de novo*. The plaintiff afterwards obtained from Mr. Justice Park, an order to enter the verdict for him on the first count, and for the defendant on the other counts. The two rules came on together, and were argued in Trinity Term last, and the Court took time to consider them.

Lord Denman, C. J.—In this case the verdict had been given for the plaintiff at the assizes. This was an action of slander. There were several counts in the declaration. Some of them were good, and some bad. The damages were taken generally without reference to any particular count. There was an application to us for a rule to arrest the judgment, and after that was made on the part of the defendant, there was another made by the plaintiff to the late Mr. Justice Park, before whom the cause had been tried, to confine the verdict to the first count, which was good. That application was granted by the learned Judge, and when, therefore, the cause came before us, it did so with the postea good upon the face of it. But we are of opinion, that the order for confining the verdict to the first count was erroneously made; for there was evidence given on the 5th count, which was admitted to be bad, and as the verdict was general, and the damages were assessed generally, we cannot tell how much the jury relied on the evidence given on the 5th count in assessing those damages. As therefore, the 5th count was bad, and the verdict must now be taken to have been entered on the whole record, it must be set aside, but we cannot merely grant a new trial, for in a case in the Court of Exchequer—*Leach v. Thomas*,<sup>a</sup> and in a case in this Court, *Day v. Robinson*,<sup>b</sup> under similar circumstances, it has been held that a *venire de novo* must issue. The rule in the present instance must follow the rule laid down in that case.

*Venire de novo awarded.—Empson v. Griffin, M. T. 1838. Q. B. F. J.*

<sup>b</sup> 4 Terin Rep. 2.

<sup>c</sup> Id. 4; Vin. Abr. "Statute E." Bro. Abr. "Parl. 52."

<sup>a</sup> 2 Cr. Mee. & Wels. 427; 1 Murp. & Hurl. 119. <sup>b</sup> 1 Ad. & El. 554.

## Exchequer of Pleas.

## CAPIAS AD SATISFACIENDUM — TIME FOR ISSUING EXECUTION.

*It is regular to arrest a defendant on a writ of ca. sa. more than a year after it has been issued, if that writ has been issued within a year after the judgment.*

*Humphrey* showed cause in a rule *nisi* to set aside the execution issued in this case, for irregularity. In the month of March 1837, judgment was signed, and on the 21st of December of the same year, a *ca. sa.* issued, on which, on the 26th of July 1838, the defendant was arrested. The writ was returnable immediately on its being executed. The ground of objection was, that the writ of execution had not been returned and filed within the year, without a *sci. fa.* to revive the judgment. The question here is, whether a defendant can be taken on a writ of execution which is more than a year old. By 3 & 4 W. 4. c. 67, s. 2, after citing "that by the existing law and practice of the courts of common law, actions may be brought, and issues proceed to trial and final judgment in vacation, notwithstanding the cause of action may have arisen subsequent to the then preceding term, it is directed that all writs of execution may be tested on the day on which the same are issued, and be made returnable immediately after the execution thereof."

*V. Williams* supported the rule, and contended that a plaintiff had no right to execute a writ which had been issued more than a year. The following cases were cited, as in point:—  
*Sir Walter Waller's case*, T. T. 31 Eliz.<sup>a</sup>  
*Ognel v. Pastone*,<sup>b</sup> *Acres v. Hardref*,<sup>c</sup> *Blayer v. Baldwin*,<sup>d</sup> *Harver v. James*,<sup>e</sup> *Alwood v. Burr*,<sup>f</sup> *Spencer's Case*,<sup>g</sup> *How v. Acton*.<sup>h</sup>

*Parke, B.*—The question in this case was, whether a defendant could be taken in execution upon a writ of *ca. ad. sa.* sued out within the year, but not executed until afterwards, or whether the proceedings were irregular, unless the writ was returned and filed within a year and a day. We are of opinion that no *sci. fa.* is necessary, and this will appear by reference to the old authorities. Lord Coke in his reading upon the statute of Westminster 2,<sup>i</sup> says, "some diversity of opinion hath been, whether there was a *sci. fa.* at the common law before this act, and the doubt grew for want of distinguishing between personal actions and real actions; for true it is, that in personal actions, if the plaintiff after judgment given, or recognizance acknowledged, sued out no process of execution within the year, he could have no *sci. fa.*, but the plaintiff was driven to his original, (which is to be intended upon the judgment or recognizance) as in actions of debt, writs of annuity, or other personal actions wherein debts or damages are recovered,

or upon recognizance." Lord Coke afterwards says in the same reading, "If the defendant or plaintiff taketh his process of execution within the year, though it be not served within the year, yet if he continue the same, he may have process of execution at any time of the year." In Gilbert on Executions, p. 94, it is said, "but though there was a year and a day to execute the judgment, yet if there was execution taken out, and that was continued beyond the year, there was no occasion for a *sci. fa.*, for then at common law there was a presumption that the judgment was satisfied." The context clearly shows this to be a misprint, for he adds, "because there appeared an execution taken out, and it was the default of the minister that it was not served." The result of these authorities is that, if the plaintiff sue out his writ of execution within the year, no *sci. fa.* is necessary to revive the judgment; but if the writ expire, he must continue it in the proper way, the object of that being, to connect the subsequent writs with that first issued. The cases cited by Mr. *Williams* are not authorities to the contrary; one contains Phillips's opinion, which appears to be correct, namely, that if a party sue out his writ within a year and a day, no *sci. fa.* is necessary, but if a year and a day intervene, that will operate as a discontinuance, and the plaintiff is put to his *sci. fa.* All that the party has to do when the writ is sued out within the year, is to enter continuances. It appears from the practice, as laid down in *Willen v. Grege*,<sup>j</sup> that continuances may be entered at any time. But in *Karver v. James*, and *Blayce v. Baldwin*, it was settled that the first writ must be returned and duly filed. It appears that, in order to avoid the necessity of a *sci. fa.*, the party must sue out the first writ within the year; but we do not find any authorities except the recent decisions before a single judge, and the statements contained in the modern books of practice, that the writ must be returned and filed within the year. Under the old practice, writs of execution were returnable on a day certain in term, and provided they were sued out within the year, the defendant might be taken in execution at any time before the return. Under the new practice, the defendant may also be taken after the year upon a writ sued out within the year.

Rule discharged.—*Simpson, v. Heath*, M. T. 1839. Excheq.

## CHANCERY SITTINGS.

*Hilary Term, 1840.*

Before the Lord Chancellor,  
AT WESTMINSTER.

Saturday .. Jan. 11	{ Appeal Motions & Causes from the last Paper.
Monday .. 13	Petitions.
Tuesday .. 14	} Causes from the last Pa-
Wednesday .. 15	per, and Appeals.
Thursday .. 16	Appeal Motions & Appeals.

<sup>j</sup> Sid. 59.

<sup>a</sup> 2 Leon. 77; 3 id. 259; 4 id. 44.  
<sup>b</sup> 2 Leon, 87. <sup>c</sup> 1 Str. 100.  
<sup>d</sup> 2 Wils. 82, & Barnes, 213.  
<sup>e</sup> 1 Willes, 255. <sup>f</sup> 7 Mod. 3.  
<sup>g</sup> Co. 275. <sup>h</sup> 12 Mod. 500.  
<sup>i</sup> 2 Inst. 469.

Friday ..	17	
Saturday ..	18	
Monday ..	20	
Tuesday ..	21	
Wednesday ..	22	
Thursday ..	23	Appeals and Causes.
Friday ..	24	Appeal Motions & Causes.
Saturday ..	25	
Monday ..	27	
Tuesday ..	28	
Wednesday ..	29	
Thursday ..	30	
Friday ..	31	Appeal Motions & Causes.

Such days as his Lordship is occupied in the House of Lords excepted.

**Before the Vice Chancellor,****AT WESTMINSTER.**

Saturday	Jan. 11	Motions.
Monday	.. 13	Petition Day.
Tuesday	.. 14	Pleas, Demurrers, Excep-
Wednesday	.. 15	tions, Causes, and Fur-
Thursday	.. 16	ther Directions.
Friday	.. 17	Short Causes, Unopposed
		Petitions and General
		Cause Paper
Saturday	.. 18	Pleas, Demurrers, Excep-
Monday	.. 20	tions, Causes, and Fur-
Tuesday	.. 21	ther Directions.
Wednesday	.. 22	
Thursday	.. 23	Motions.
Friday	.. 24	Short Causes, Unopposed
		Petitions and General
		Cause Paper.
Saturday	.. 25	Pleas, Demurrers, Excep-
Monday	.. 27	tions, Causes, and Fur-
Tuesday	.. 28	ther Directions.
Wednesday	.. 29	
Thursday	.. 30	Short Causes, Unopposed
		Petitions, and Ditto.
Friday ..	31	Motions.

**Before the Master of the Rolls.****In and after Hilary Term, 1840.****AT WESTMINSTER.**

Saturday ..	Jan. 11	Motions.
Monday ..	13	Petitions in Gen <sup>l</sup> Paper.
Tuesday ..	14	Pleas, Demurrers, Causes,
Wednesday ..	15	Further Directions, and
		Exceptions.
Thursday ..	16	Motions.
Friday ..	17	
Saturday ..	18	Pleas, Demurrers, Causes,
Monday ..	20	Further Directions, and
Tuesday ..	21	Exceptions.
Wednesday ..	22	
Thursday ..	23	Motions.
Friday ..	24	
Saturday ..	25	Pleas, Demurrers, Causes,
Monday ..	27	Further Directions, and
Tuesday ..	28	Exceptions.
Wednesday ..	29	
Thursday ..	30	Petitions in Gen <sup>l</sup> Paper.
Friday ..	31	Motions.

**AT THE ROLLS.**

Saturday ..	Feb. 1	Short Causes, after swearing in the Solicitors.
Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.		

**COMMON LAW SITTINGS,  
In and after Hilary Term, 1840.****Queen's Bench.**

The Sittings in Middlesex are appointed for the 13th, 16th, and 29th of January, and in London the 30th.

**Common Pleas.****MIDDLESEX. In Term. LONDON.**

Friday ..	Jan. 17	Wednesday Jan. 22
Friday ..	.. 24	Wednesday .. 29

**MIDDLESEX. After Term. LONDON.**

Saturday ..	Feb. 1	Monday .. Feb. 3
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The Court will sit at Ten o'clock in the forenoon on each of the days in Term, and at half-past Nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Monday the 3rd of February, in London, no causes will be tried, but the court will adjourn to a future day.

**Exchequer of Pleas.****MIDDLESEX.**

First Sittings .....	Thursday ..	Jan. 16
By adjournment if } necessary,	Friday ..	.. .. .. 17
Second Sittings .....	Wednesday ..	Jan. 22
By adjournment if } necessary,	Thursday ..	.. .. .. 23
	Friday ..	.. .. .. 24

LONDON.

First Sittings .....	Monday ..	.. Jan. 20
Second Sittings .....	Tuesday ..	.. .. 28
By adjournment if } necessary	Wednesday ..	.. .. 29

**MIDDLESEX. After Term. LONDON.**

Saturday ..	Feb. 1	Monday .. Feb. 3
		To adjourn only.

The Court will sit during Term at Ten o'clock.

**THE EDITOR'S LETTER BOX.**

We regret that our opinions on a recent professional topic differ from a learned and respected correspondent at Bath. We believe that we fairly represent the sentiments of both branches of the profession on the point referred to. We will endeavour to accommodate our correspondent so far as we can consistently with our duty. His is the only complaint that has reached us.

We refer to the Advertisement on the cover of this Number regarding the transmission of the Legal Observer by the Penny Post.

The hints we have received relating to the criticism in the Morning Chronicle of the 25th December, touching the general character of the London Attorneys, shall be attended to,—though the gross ignorance of the remarks in question render them almost beneath notice.

W. S.'s letter shall be inserted.

To an Articled Clerk we answer "Stewart's Second Volume of Blackstone."

C. B. will please to apply to our Publisher.

The grievance as to the Holidays mentioned by "An Attorney," shall be attended to.

# The Legal Observer.

SATURDAY, JANUARY 11, 1840.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## HOW FAR A LICENCE CAN BE ASSIGNED.

We shall here endeavour to show how the law stands at the present time as to the assignment of a licence.

In *Thomas v. Sorrell*,<sup>a</sup> it is said, “A dispensation or licence properly passeth no interest, nor alters nor transfers property in any thing, but only makes an action lawful, which, without it, had been unlawful, as a licence to go beyond the seas, to hunt in a man's park, to come into his house, which, without license, had been unlawful. But a licence to hunt in a man's park, and carry away the deer killed to his own use, to cut down a tree in a man's ground, and to carry it away the next day after to his own use, are licenses as to the acts of hunting and cutting down the tree; but as to the carrying away of the deer killed and the tree cut down, they are grants. So, to license a man to cut my meat, or to fire my wood to warm him by, as to the actions of eating, firing my wood, and warming him, they are licences; but it is consequent necessarily to those actions that my property be destroyed in the meat eaten and in the wood burnt, so as in some cases by consequent and not directly, and as to its effect, a dispensation of licence may destroy and alter property.” In *Grantham v. Howley*,<sup>b</sup> it is said, that “the land is the mother and root of all fruits. Therefore, he that hath it may grant all fruits that may arise upon it after, and the property shall pass as soon as the fruits are extant. A person may grant all the tithe-wool that he shall have in such a year; yet, perhaps, he shall have none:—but a man cannot grant all the wool that shall grow upon his sheep that he shall buy

hereafter, for there he hath it neither actually nor potentially.” Where all the profits of lands are demised, the land itself passes: thus, the lands pass by the grant of the boillourie of the salt;<sup>c</sup> and whatever words are sufficient to explain the intention of the parties that the one shall divest himself of the possession, and the other come into it for such a determined time, such words, whether they run in the form of a licence, covenant, or agreement, will, in construction of law, amount to a lease;<sup>d</sup> and see *Right v. Proctor*,<sup>e</sup> where Yates, J., observed that the instrument, even as a license to inhabit, amounted to a lease.

However, where<sup>f</sup> the owner of the fee granted to A., his partners, fellow adventurers, free liberty to dig for tin and all other metals throughout certain lands therein described, and to raise, make merchantable, and dispose of the same to their own use, and to make adits for, and necessary for the exercise of that liberty, together with the use of all waters and water-courses, excepting to the grantor liberty for driving any new adit within the lands thereby granted, and to convey any water-course over the premises granted, habendum for twenty-one years; covenant by the grantee to pay one-eighth share of all ore to the grantor; and then, in failure of the performance of any of the covenants, a right of re-entry was reserved to the grantor; — it was held that this deed did not amount to a lease, but contained a mere license to dig and search for minerals; and

<sup>a</sup> Co. Litt. 4 b; *Parker v. Plummer*, Cro. Eliz. 190; *The Queen v. Winter*, 2 Salk. 588.

<sup>b</sup> Bacon's Abr. tit. Leases, K.; *Trevor v. Roberts*, Hard. 366; *Throgmorton v. Tracy*, Plowd. 145; *Haverhill v. Hare*, 3 Bulst. 250.

<sup>c</sup> 4 Burr. 2209.

<sup>d</sup> *Doe d. Hanley v. Wood*, 2 B. & Ald. 724.

that the grantee could not maintain an ejectment for mines lying within the limits of the act, but not connected with the workings of the grantee.

But by a very recent decision<sup>s</sup> this case would seem to be to some extent invalidated, as it was there determined that a licence to search for and raise metals, and also to carry them away, and convert them to the licensee's own use, passed an interest which was capable of being assigned. The following is a part of the judgment of Lord Denman, C. J. on this point of the case:

"The first point, therefore, which presents itself for our consideration is, whether the interest conveyed to Setree and Stacey was capable of being assigned. No authority was cited to shew that the interest was not assignable; but the case of *Doe d. Hanley v. Wood*, 2 B. & Ald. 724, was relied on as establishing that the grant from the defendant Hill operated strictly and merely as a licence; and it was contended that a licence was in its nature personal, and not assignable. In the case referred to, the indenture relied on did not, perhaps, substantially differ from that under discussion, and that indenture was held not to amount to a demise of the mine, so as to entitle the grantee to maintain an ejectment; and it was in that case said by the Court to be nothing more than a grant of a licence to search and get (irrevocable indeed, on account of its carrying an interest) with a grant of such of the ore as should be found or got, the grantor parting with an estate or interest in the mines, metals and minerals. Now assuming this description of the instrument to be correctly applicable to the deed now under consideration, it is to be observed that the deed in this case operates not merely as a licence, but as a grant also; and that such a grant to a man and his assigns, carries an interest which is assignable, appears from *Palmer's case*, 6 Rep. 25, reported also in Cro. Eliz. 819, under the name of *Bassett v. Maynard*. In that case Sir Thomas Palmer, being seised in fee of a wood, bargained and sold to one Cornforth and his assigns, 600 cords of wood, to be taken by the assignment of Sir Thomas Palmer. Cornforth assigned his interest to the plaintiff; and the first resolution in the case was, that Cornforth had an interest which he might assign over, and not a thing in action or a possibility only; and the case of *Grantham v. Hawley*, Hob. 132, leads to a similar conclusion."

<sup>s</sup> *Mashett v. Hill*, 5 Bing. N. C. 694.

## THE SPECIAL COMMISSION.

We forbear for the present from making any remark on the interesting and important trials now proceeding at Monmouth; neither shall we give any opinion as to the legal point which has been made by the counsel for the prisoners; but it may be well to state what that point is, as, in the opinion of all, it deserves attention. The facts are these, according to the evidence of Mr. Maule, the Treasury solicitor. The bill was found on the 11th of December, on the 12th Mr. Maule delivered to the prisoner a copy of the indictment, with a list of the jury, application having been made for a copy of the indictment for that purpose by his solicitor. On the 17th of December Mr. Maule attended again, and delivered a list of the witnesses; three other persons accompanying him on both occasions.

The question then turns on the 7th Ann. c. 21, s. 11, by which it is enacted that when any person is indicted for high treason or misprision of treason, a list of witnesses that shall be produced at the trial for proving the indictment, and of the jury be also given *at the same time* that the copy of the indictment is delivered to the party indicted. Now, it cannot be disputed that the directions of the statute have not been literally complied with, but whether the intention has or has not been pursued remains to be decided.

## PRACTICAL POINTS OF GENERAL INTEREST.

### HUSBAND AND WIFE.

"If the husband and wife separate by mutual consent, the husband is liable for necessaries supplied to the wife, unless she has a competent provision either from her husband or from her own resources." Per *Coltman, J., Dixon v. Harrell*, 8 C. & P. 717; 18 L. O. 195, where the cases on this point are collected. But even where a separate maintenance is allowed by the husband, when his own violent conduct renders it necessary for her to exhibit articles of the peace against him, he is liable for the expences thereby incurred. Thus, in an action for work and labour done by plaintiff as an attorney in the exhibiting articles of the peace against the defendant on behalf of his wife: the defendant and his wife were separated, and "the first question," said Lord Denman, C. J., "was whether the

evidence was sufficient to warrant the exhibiting articles of the peace, and we think it was. The next question was, whether the defendant was liable, as he allowed his wife a separate maintenance. It appeared that the defendant had used great violence towards her. It was his own misconduct therefore that made the work and labour which was the subject of the action necessary, and he cannot therefore be allowed to set up the separate maintenances to exempt himself from liability." *Turner v. Kooks*, 2 P. & D. 294.

### CHARACTER OF THE ATTORNEYS OF LONDON.

Our attention has been called to an article in the Morning Chronicle of the 25th December, in which, whilst reviewing "The Adventures of an Attorney in Search of Practice," a large share of obloquy is thrown upon the Attorneys of London,—not on the few who disgrace the profession, but on the general body. Our readers being almost entirely members of the profession, or persons connected with the administration of justice, it would be manifestly useless to enter into an elaborate vindication of the large body of lawyers in question. We had, indeed, some doubt whether we were justified in recording the subject in our pages, but it has been suggested that we are bound to let all branches of the profession know what is said of them, in order that they may act towards their opponents as may be deemed expedient.

We therefore notice the following passages, which appear to be the most offensive, in the paper referred to:

"In society there is always a broad line of demarcation between a liberal and intellectual profession, and the mere mechanical agency which works out its directions and intentions. We do not wish to say any thing offensive to attorneys, but Mr. Sharpe must be aware that they are not supposed to know any thing of law; indeed, they are not responsible to their clients for any mishap through ignorance of law. It is notorious that the London attorney acts, in all cases, as an implicit machine in the hands of his counsel, but for whom he would be in endless and inextricable hobbles."

Referring to one of the anecdotes which the critic describes as manifesting "stupid ignorance," he says, these "self recorded proceedings more than once struck us as being possibly intended as a satire upon the proverbial legal incapacity of London attorneys."

It would be a waste of time, as addressed to the readers of this Journal, to make any formal refutation of this absurd calumny, the value of

which may be estimated by the gross ignorance of a writer who ventures to tell the public that "Attorneys are not responsible to their clients for any mishap through ignorance of law"—a statement which would have been strictly true if affirmed of the other branch of the profession, the members of which, having no remedy for their fees, incur no legal responsibility for the non-performance of any supposed obligations. The obnoxious passages occur, as we have said, in the course of the Review of the work above mentioned. It is not our present purpose to enter into the merits of the judgment which the writer has passed on the work before him. He says that "a calm and ingenuous narrative of the life, career, and experience of a London attorney, arrived, by dint of industry and integrity, at a respectable practice, might prove at once interesting to the public, and serviceable to the rising members of the profession." The critic thinks the Author of the Book, who assumes the name of Mr. Gregory Sharpe, has not succeeded in his labours. In this we differ from the writer, and we happen to know that the Author, whose talents and attainments may be estimated by his works, is a gentleman of great respectability—of large practice—and the near relation of distinguished members in the higher walks of the profession. The subjects of controversy between the Author and his critic relating to the conduct of the Bar, we shall not further enter into than merely to remind our readers that it is impossible the Bar can participate in the feelings imputed to some of its members towards solicitors in general. It will be recollect that several of the Judges and many eminent counsel have very near relations amongst the solicitors, and many of the latter live in friendly intercourse with the former. As a solicitor, if he could always choose his clients, would prefer those of a respectable station and character, with whom, whilst discharging his duty, he might associate on friendly terms; so there can be no doubt that the barrister, (who must act for all who apply to him) would infinitely prefer that the solicitors with whom he has such constant and confidential communication, should be of the station and character of gentlemen. The interest, as well as the dignity of the bar, is inseparably connected with the respectability of their immediate clients, the solicitors. We think, therefore, that the supposition of any unfriendly feeling between the two branches of the profession, is wholly unfounded, and that they are the greatest enemies of the profession in general, who seek to foment trifling into serious questions.

We look upon the law as one great profession, composed of several ranks or degrees, the honor and interest of each of which is inseparably connected with the well-being of the whole, from the Lord Chancellor down to the last person who was admitted on the roll of attorneys. Nay, in our opinion, except in mere professional rank, it is idle to call one branch more respectable than another. Each fulfilling its separate duties ably and honorably, is entitled to equal confidence and respect, and

\* This must refer to the hackney writer and copying clerk.

the one is in no essential point superior to the other. How often does it happen that one brother goes to the bar, and another to the office of the attorney. They have received the same education,—they have lived in the same habits and feelings,—have mixed in the same society: he who should attempt to set the one above the other would be despised by both as a vulgar meddler,—utterly ignorant of the true foundations on which society rests.

## ON THE LAW AS TO MARRIAGES ABROAD BETWEEN ENGLISH SUBJECTS WITHIN THE PROHIBITED DEGREES.

(Continued from p. 185.)

We will now proceed to the subject we have more immediately in view in this article: the present validity of foreign marriages between English subjects within the prohibited degrees of affinity. The observations we have had to make respecting the decisions on Scotch marriages, will, we think, be found to throw some light upon it. It has been sometimes questioned by the Ecclesiastical lawyers whether the rule as expressed by Lord Stowell, "that a foreign marriage, valid according to the law of the place where celebrated, is good every where else,"<sup>o</sup> is true, except so far as it dispenses with the ceremonies which our Marriage Act requires, and certain it is that no case has yet been decided here, in which this principle has been applied to marriages between English subjects, good abroad, but within the degrees of affinity prohibited here. It has been argued, therefore, that "the law which prohibits persons related to each other in a certain degree from intermarrying, and declares this intermarriage to be null, imposes on them a personal incapacity *quoad* that act, and that that incapacity must continue to affect them so long as they retain their domicile in the country in which that law prevails. The resort to another country, where there was no such prohibitory law, for the mere purpose of evading the law of their own country, and with the intention of returning thither when their marriage had taken place, cannot be considered as a change of their former domicile, or the acquisition of a domicile in the country to which they had resorted. They must, therefore, be regarded as still subject to the personal incapacity imposed by the law of their real domicile."<sup>p</sup>

"The rule as to *lex loci contractus* therefore," Mr. Burge says, "does not prevail when the parties have no *bona fide* domicile in *loco contractus*, but have resorted thither to evade a prohibitory law in force in the place of their actual domicile, extending to marriages contracted in any other country, in terms or in effect; and which law has made void a marriage contracted in contravention of its provisions."<sup>q</sup>

Owing to the late statute, previous to which it was easy to evade the operation of this law

by a friendly suit in the Ecclesiastical Courts, and to the numerous marriages within the prohibited degrees of affinity, now in consequence of the statute, taking place abroad, the doctrine here laid down has become a matter of great interest, and we purpose to examine it somewhat in detail.

The idea of fraud on the law of a country is rather a favorite one with jurists. When examined, however, we think it will be found to have a very narrow foundation for the supposed countenance afforded to it by our law. By the courts of several American states it has been repeatedly overruled. It is principally grounded on an opinion of the jurist Huber,<sup>r</sup> supported by a *dictum* of Lord Mansfield, in *Hobinson v. Blund*.<sup>s</sup>

In the first place, it is at once met by the difficulty, that it has been over and over again decided that Scotch and foreign marriages (between minors and others who could not have contracted marriage here) undertaken, expressly and admittedly, to evade our law, are good, if good *per lex loci*, and vice versa. But then, say the advocates of the *in fraudem legis* doctrine, these decisions are consistent, because the Marriage Act in terms excepts Scotch and foreign marriages.<sup>t</sup> In this view, however, they at once throw over Lord Mansfield's authority, because, as Sir W. Blackstone, who was counsel in the case, notes it in the margin of his report, he threw out a "*quare* whether stolen marriages in Scotland are valid." However, as this case is really the only one in which, as far as we are aware, the idea of evasion of our law is set up, we must go more fully into it. The case was argued in 1760. The question was whether a bill of exchange given in France by one English subject to another, *but made payable in England*, the consideration of which was a gambling debt, should be held recoverable in an English Court. It was found not to be recoverable in France; but Lord Mansfield (though on this plain ground, he afterwards said the case had after all come to nothing) had it argued twice, as

<sup>r</sup> Huber de Cons. Leg. lib. I, tit. 3, n. 8.

<sup>s</sup> 1 W. Bl. 251; Burrows, 1077.

<sup>t</sup> In support of this, an over-ruled decision of Sir George Hays, in 1776, is quoted (*Hertford and Morris*, 2 Hag. Con. C. 430), in which Sir George says, that going abroad to evade the act is immaterial, *because* of the exception in the act as to foreign marriages. But this *dictum* was surely not meant in limitation of the general rule of the *lex loci* prevailing. Had there been a general principle of law at the time of the marriage act, that going abroad to evade the operation of our local laws avoided the act done abroad, which is the position contended for, the mere exception of Scotch and foreign marriages from the Marriage Act could hardly have been held to except the entire operation of such a principle upon Englishmen marrying in Scotland or abroad. It must, in such case, have been held merely to except marriages of foreigners in foreign lands, and of Scotchmen in Scotland.

<sup>o</sup> Ruding & Smith, 2 Hagg. Con. Ca. 371.

<sup>p</sup> Burge, 192.

<sup>q</sup> Id. 200.

bearing on international law. In his judgment he touched on the rules applicable to foreign personal contracts. He lays down the general rule as to the *lex loci* prevailing. But then he says "this rule admits of an exception where the parties had a view to a different kingdom. Contracts are to be considered according to the place where they are to be executed." And Mr. Jas. Wilmer said, "The place where the money is to be paid must govern the law. This was determined as to usury on contracts in Ireland."<sup>u</sup> From this it is evident that there is no ground in the decision for the wide principle contended for. The *quære* thrown out, merely in answer to an illustrative argument used by counsel, comes more to the point; but is plainly overruled. Burrows in his report says, that Lord Mansfield referred to a case before Lord Hardwicke of a minor's stolen marriage at Ostend; the validity of which Lord Hardwicke doubted, and ordered to be tried before an Ecclesiastical Court; but the trial was stopped by the minor's marrying again on coming of age. We have looked carefully for this case, and have no doubt *Bulter* and *Freeman* (Ambl. 302) is the one referred to. It had been decided in 1756, four years before. It was the case of a ward married at Antwerp. Lord Hardwicke said, "This is the first case under the late Marriage Act. As to such a marriage (I was going to call it a robbery) there is a door open in the statute as to marriages beyond seas and in Scotland." He afterwards goes on to question the validity of the marriage: "It is said by witness that he saw them married according to the rites and ceremonies of the Church of England. But it will not be valid here unless it was so by the laws of the country where it was had." The father, it appears, instituted a suit in the Ecclesiastical Court to try the validity according to the foreign law.

This case, therefore, so far from supporting Lord Mansfield's doubt, as stated in the margin of Blackstone's report, expressly overrules it. It is the more material for our present purpose, as being the first case under the

<sup>u</sup> A reference to one or two recent equity cases on the law which is to govern foreign contracts, may be acceptable to some of our readers.

In *Anstruther v. Adair*, 2 M. & K. 313, the Lord Chancellor held that the Scotch law was to govern the construction of a Scotch marriage settlement, so as to defeat the wife's equity to a settlement out of after-descended property in England.

In *Holmes v. Holmes*, 1 R. & M. 660, testator made his will in Ireland, but died domiciled in England. Annuity is to be paid according to Irish currency.

It was decided in Ireland, *Richards v. Gould*, 1 Mol. 122, that the English Annuity Act is to govern an annuity charged on Irish property but granted in England.

That a foreign judgment is not questionable in this country, many cases, in particular *Martin v. Nicholls*, 3 Sim. 458, and 2 Swaust. 326, S.P.

Marriage Act. The Marriage Act was passed in 1753. If Lord Hardwicke had thought that before that act, there was a principle of law in operation, that a party going abroad to evade our laws could not set up the *lex loci contractus*, but that the new act had altered this, he could hardly have failed to have said so. He treats it, that the new statute, by leaving the old principle of *lex loci contractus* untouched, had left a door open to evade its new provisions of banns, rites, consent for minors, &c. not having opened a new door.

We find but one other case before Lord Hardwicke bearing on the subject. It is *Roach v. Garvan*, decided in 1748.<sup>v</sup> It is material, as shewing the principles of law as to foreign marriages clearly laid down, before the marriage act passed. It was the case of a ward of Court, aged only eleven, married in France to a boy of seventeen, the son of a Frenchman. Lord Hardwicke laid down that the infant, being a natural-born subject, could not renounce her allegiance. He said "the most material consideration is the validity of the marriage. It has been argued to be valid from being established by the sentence of a Court in France having proper jurisdiction. And it is true, that if so, it is conclusive, whether a foreign Court or not, from the laws of nations in such cases; otherwise the rights of mankind would be very precarious and uncertain."

Now here, if Mr. Burge is right, Lord Hardwicke was called upon to fall back on the general principle Mr. Burge contends for, that the subject, though abroad, unless *bond fide* domiciled there, (which in Mr. Burge's sense of domicile was not the case) could not avail himself of the *lex loci* to avoid the operation of our law. The girl here, was only eleven years old. By our common law, as stated by Mr. Burge, a female under twelve could not contract matrimony. Indeed, according to Sir Matthew Hale, the attempt would have subjected the party to a conviction for rape.<sup>w</sup> So far from doing this, in committing unreservedly the jurisdiction as to validity, to a foreign Court, he lays down a principle quite destructive of all Mr. Burge's doctrines as to *bond fide* domicile; because, as we shall presently remark further, if that principle only means *bond fide* as far as required by the foreign law, it amounts to nothing, and there is nobody who doubts it. It would then be, by common consent, one of the incidents bearing on the validity of the marriage according to the *lex loci contractus*.

This view of our law as to the evasion of our English regulations, is adopted by Judge Story. He lays it down that Huber's doubt is expressly over-ruled in England, and instances our rules as to stolen Scotch marriages in proof. There are few opinions which command higher respect than Mr. Jacob's. In his very learned notes appended to his edition of Roper's Husband and Wife, he takes the same view. He says, as to the objection that

<sup>u</sup> 1 Ves. s 159.

<sup>v</sup> 1 Hall. P. C. 630; and 4 Bla. Com. 212.

an intention to evade our law may affect the validity of the foreign contract: "that, though apparently sanctioned by Lord Mansfield, it has not prevailed either with respect to marriages in Scotland, or with respect to marriages in other places out of England, and there does not appear any exception to the rule, that a foreign marriage, valid according to the law of the place where celebrated, is good every where else."<sup>w</sup>

Except the cases of legal personal disqualification against marrying at all, such as *Lolley's*, to which we shall soon advert, we know but of one country (France)<sup>x</sup> where the validity of a foreign marriage between its own subjects is tried by its own and not the foreign law. French subjects who are required at home to obtain the consent of parents, &c. are required so equally if they marry out of France. Did such a broad personal rule obtain here, there would have been no room for the present article; and it is to such a result that we are addressing ourselves, unless the rules of restriction can be so narrowed as to approve themselves to the moral approbation of all the community, minority as well as majority, i. e. to those cases of affinity which, by the common consent of the country would be discountenanced, viz. affinities in one degree, as step-father and step-daughter.

We will now go on to examine the supposed second rule as to a foreign *bond fide* domicile being required. Our English supposed limitation of the general rule, is not, as we have seen, treated by such of the civilians as have espoused these views, as an absolute personal rule, but one merely *in fraudum legis*, and they therefore attach to the limitation this sub-limitation that the disqualification will be removed by a *sufficient domicile* abroad. *But sufficient by what law?* The sufficiency according to the requirements of the foreign law is admitted on all sides. Our law as to domicile proceeds on quite different grounds; but supposing our law required a year's residence to make a domicile in any place, and the law of that place required two years, and also required domicile to ratify the contract of marriage within it, it is evident that we here, trying the validity of such a marriage, should require the two years' residence to be proved. These civilians admit this, and require us to fulfil the foreign law in all cases. But then they require a sufficient domicile by our law as well. This would split the unity of the

<sup>w</sup> 2 Roper, H. & W. Jac. edit. 495. It must be observed that Mr. Jacob does not specifically advert to objections arising from affinity, or from any prohibitory rules not being in the Marriage Act. The rule, however, is evidently older than the Marriage Act, and is always found without a limitation from the first.

<sup>x</sup> The marriage *extra fines* of a person on whom celibacy was by the law of a place imposed (as of a Catholic priest in a Catholic country), would, we apprehend, be there viewed just as *Lolley's case* was here.

contract, and determine it partly by one law and partly by the other. They require two sorts of domicile to make up the marriage contract—the one by the law abroad to get over the *lex loci*, the one by our law, not as essential to the contract, but as evidence of the *bona fides* of the contract, and to get over the *quasi* personal disability they suppose, i. e. the suspicion of intention to evade our supposed prohibitory law. It is clear the *bond fide* domicile they would exact, must be by way of *evidence*, and evidence only. But if so, how can it be an essential? Parties may marry without any intended fraud on their own law, where not domiciled to the satisfaction of the civilians; or, what is more likely, may become so domiciled with a positive intention to evade their own law. They may get naturalized abroad, move their property there, do every thing which would shew a domicile with regard to the laws about personal estate,<sup>y</sup> and yet all the while it may be capable of clear proof that they did this only because they chose to be married, and were not permitted to be married here, and that they intended and did all for evasion. They may intend a permanent residence also, and merely because they do not like the English law as to affinity. What would the civilians who countenance these refinements, say to this case? Their notion seems to have arisen from viewing the law, as an individual whose honour is to be vindicated, and who is to be treated with at least outward shew of observance and respect. They make it, let it be observed, not a principle of English law merely, but of general law; though they can find no instance in any one country to support it, except Lord Mansfield's manifestly erroneous *dictum* in a bill of exchange case. To us the whole scheme seems altogether insupportable. A law, we should think, is either local or it is personal, and anything between we cannot comprehend. If it were the case of a foreigner's marriage here, would they ask if he came here in evasion of his own law? or would they not rather say with Fergusson "A party domiciled here cannot be permitted to import a law peculiar to his own case."<sup>z</sup>

We have mentioned, that there have been many cases of this sort decided in America on the principle we are contending for; and on subjects like these, where uniformity of principle is of the highest international importance, the decisions of foreign courts should be held almost equal to our own—certainly to out-

<sup>y</sup> The phrase as to retaining domicile, Burge 190, is no doubt adopted from the cases relating to personality. To apply this to foreign marriage contracts would be most mischievous. A nobleman may for all purposes be resident in Italy. But because he has not sold or let his mansion here, or only let it furnished; is his marriage there to be held bad? It seems to us preposterous to attempt to attach refinement such as this to the otherwise clear rule that the law of the place shall prevail.

<sup>z</sup> Ferg. Reports on Marr. & Divorce, 399.

weigh the flimsy structure based on Lord Mansfield's supposed doctrine. The American cases will be found referred to in Burge; in Story; and in Chancellor Kent's Commentaries.<sup>a</sup>

We have stated above that we know of no case by which the obstacles from affinity have come in question in our Courts with reference to a foreign marriage. In one case, never, as far as we know, commented on with reference to this subject, the principle came before Leach, V. C. It was the case of a marriage in Scotland of a deceased wife's sister. The marriage being shewn to have been void there (not voidable only as it then was in England, in which case it would not have been open to observation till annulled, and one of the parties being dead it would have been then too late) the children were held as being illegitimate in this country, which if it had been an English marriage they would not have been. In this case, affinity was looked upon as one of the circumstances which it belonged to the *lex loci* to determine, and not as a personal disqualification attaching to the *status* of birth.<sup>b</sup>

The law up to the passing of the late act,<sup>c</sup> as bearing on marriages in evasion of the local laws of the place of birth has now been examined. We have next to consider the effect of the late statute. If we are right in concluding that before this act affinity was of consequence only as one of the circumstances to be tried by the *lex loci*, we think it will appear that the late act has made no change in the law. The whole scope of the act is simply to make voidable marriages void. It is not made to apply to Scotland, because marriages there within the prohibited degrees were void already; and if it had been allowed to apply, the quieting clause as to past marriages would have set up any void marriages there. But does this act (which leaves English subjects just as open to go abroad and marry as before) apply to countries where these marriages are not voidable, but absolutely good? It is true the second sec. says: "all marriages within the prohibited degrees shall be absolutely null and void." But this of course is governed by the preamble; and the preamble merely says, "whereas marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical Court, and it is fitting that all such hereafter should be *ipso facto* void, and not merely voidable." The act is "not to extend to that part of the kingdom called Scotland." The very phrase, as also that of "The Ecclesiastical Court" shews a local intent, and not a personal one. Suppose a Scotchman had married his late wife's sister abroad before the act, and that it would have been good in Scotland. Suppose this now: there can be no doubt it would still be good. Why? Because the statute is a local one, at least to him; and if so, it will be difficult indeed to hold it personal to

Englishmen. The statute imposes no prohibition from entering into such a marriage, as if it were illegal to attempt it, but merely renders that which before was voidable, void. Or let us take the case of a Jew marriage. Between Jews, marriages are very often celebrated in England between relations by blood as near as uncle and niece.<sup>d</sup> With reference to Jew's marriages Lord Stowell has said: "If the rule of the Jewish law be that the fact of a witness to the marriage having eaten prohibited viands, or profaned the Sabbath-day, would vitiate the marriage itself, an English Court would give it that effect when duly proved."<sup>e</sup> The Jews resident here are no doubt within our statutes. Would these marriages have been dissolved in the Ecclesiastical Court before the late act? and if not, can the late act have affected them, or would not its application be held limited to such marriages as were voidable before? The words "all marriages" would in their terms, apply on the other construction, even to foreign marriages between foreigners.

One thing to be clearly borne in mind, throughout all these speculations, is, that if we establish these principles against evasion, a man may have two legal wives at once; the wife connected by affinity, who will be held a lawful wife abroad, and any afterwards wife, not within the prohibited degrees, who would be held the lawful wife here.—This observation applies also to personal disqualifying laws, such as that of France. In a case of this sort, and of a foreign court giving judgment against the husband for the debts of the first or foreign-married wife, we apprehend it would be a question of great difficulty, how the husband could call in question that judgment, if made the ground of an action here. In fact, our whole principle of law is, so entirely to trust to the laws and decisions of foreign countries in matters happening in them, that we should be very careful in introducing a limitation of any sort upon it which can produce a partial conflict, if in other parts, we cannot carry the limitation through, without violating the general course we follow, of deferring to foreign judgments.

[To be continued.]

## SUPERIOR COURTS.

### Rolls.

#### PRACTICE.—ISSUE.—VERDICT PRO CONFESSO.

Upon an issue directed by decree of the Court, and the plaintiff therein not going to trial, the Court will not on a single default order a verdict to be taken pro con-

<sup>a</sup> 2 Kent c. 91. It is there stated that evasion is nothing.

<sup>b</sup> Bayley v. Snelham, 1 Sim. & Stu. 78. It was so looked on *ex concessis*, and not on argument.

<sup>c</sup> 5 & 6 W. 4, c. 54.

<sup>d</sup> It seems strange that we should be professing to follow the Levitical law, and that the Jews either do not attend to it, or else they read it very differently from us. In a former note we should have referred to Deuteron. ch. 25, v. 5, commanding a widow to marry no one else, if her husband left a brother, and commanding him to marry her.

<sup>e</sup> Rading v. Smith, 2 Hag. Con. C. 385.

fesso against him, but will make an order that unless he go to trial next assizes, a verdict pro confesso shall be taken against him.

The suit was instituted by the Reverend Mr. Casborne, to set aside a deed obtained by Mr. Barsham, a solicitor, from a farmer of the name of Chandler. The grounds alleged were fraud and undue influence; and the Master of the Rolls on the hearing of the cause in February 1838, thought that the parties should have an opportunity of investigating the transaction in a court of law, and his Lordship accordingly directed an issue. The issue was carried down for trial at the summer assizes for 1838, when it was made a *remittit*. It was again carried down at the last Spring assizes, when it was tried, and a verdict was given for the plaintiff, the jury finding that the deed had been obtained by undue influence, but not by fraud. In June last Mr. Barsham applied to this Court for a new trial at the then next Summer Assizes, but prior to these assizes an application was made by the plaintiff to postpone the trial to the Spring Assizes 1840, which his Lordship the Master of the Rolls had granted. The defendant appealed to the Lord Chancellor who rescinded the order to postpone the trial, and expressed an opinion that it was the plaintiff's duty to try the issue at the Summer Assizes; but the plaintiff forbore proceeding to trial notwithstanding that expression of opinion.

Mr. Cooper now asked for an order that the issue might be taken *pro confesso* in favor of the defendant.

Mr. Pemberton and Mr. G. Richards, contra, said that the usual order where the plaintiff in an issue directed by the Court made default, was that he should go to trial at the next assizes, and in case he did not, that then a verdict *pro confesso* should be taken against him. There was no authority to support the present application, and it was contrary to the practice of this Court to allow a verdict *pro confesso* to be taken against the plaintiff upon a single default.

Mr. Cooper.—The plaintiff was bound to comply with the order of the Court to proceed to trial, and was not authorised to make a default, even once. There was a contrary practice in the equity side of the Court of Exchequer, but in *Beurblock v. Tyler*,<sup>a</sup> the Master of the Rolls decided that the practice of the Exchequer, permitting the plaintiff in an issue to make default once in going to trial did not prevail in Chancery. It was too much to allow the plaintiff the power of trying or not trying the issue, as he pleased; and he had been guilty of a deliberate contempt of the order of the Court.

Lord Langdale, M. R., asked if there was any case in which, upon a single default, there had been an order for taking a verdict on an issue *pro confesso* against the plaintiff?

Mr. Cooper said he had not found such a case; but as the Court had no direct power to compel a plaintiff to try an issue, it could only

proceed indirectly by ordering the issue, where the plaintiff made default in trying it, to be taken *pro confesso*.

Lord Langdale.—The case was such that if there was a direct authority for it, the motion ought to be granted. As none had been stated he should search for authorities before he decided.

His Lordship, on a subsequent day, said that in his search he had only met with one case in favour of the motion, and even that one case was not in point. He did not conceive himself justified, on that single authority, to allow a verdict on the issue to be taken *pro confesso*; but he would make an order that it should be so taken, unless the plaintiff should proceed to the trial at the next assizes. (See *Anony. 4 Madd. 255.*)

*Cusborne v. Barsham*.—At the Rolls, December 2 & 4, 1839.

Note.—Some of the circumstances of this case are stated in a report on another point, 10 Leg. Obs. 314.

#### Queen's Bench Practice Court.

CHARGING LIVING.—ECCLESIASTICAL PROPERTY.—WARRANT OF ATTORNEY.—INDEPENDENT SECURITY.

Where an ecclesiastical person has conveyed his living to trustees to secure the payment of a certain sum of money borrowed, and as a further security for the same he gives an independent warrant of attorney, this latter is not void as a contravention of the statute 13 Eliz. c. 20, s. 1.

This was a rule *nisi*, obtained for the purpose of setting aside a warrant of attorney, judgment and sequestration thereon, in the present case. The warrant of attorney in question, it was suggested, operated as a charge on the living of the defendant, contrary to the provisions of the 13 Eliz. c. 20, s. 1; it was on this objection that the application was grounded. It appeared that the vicarages of Chesterton and Colerne, with the appurtenances, by indenture bearing date 23rd November 1831, made between Price of the first part, George Robins of the second part, and Bendry, the plaintiff, of the third part, were on the consideration of 3000*l.* paid by the plaintiff Bendry to Robins, at the request of Price, and in discharge of a debt owing by him to Robins, and secured upon two policies of life assurance therein recited; and of 700*l.* also paid by Bendry to Price, demised and granted by Price to Bendry for ninety and nine years, if Price should live so long, at a pepper-corn rent, upon trust, that Bendry should thenceforth, or at any time thereafter, enter into possession of the said vicarages and premises, and so long as the said 3700*l.* and interest, or any part thereof should remain due, continue such possession, and receive all the tithes, rents &c.; and manage the said vicarages, and stand possessed of the proceeds, upon trust in the first place, to pay expences; secondly, to pay and to retain to himself Bendry, his executors, administrators or assigns, the said principal sum of 3700*l.* thereby secured, with interest thereon, as well

as to pay the premiums on the said life policies, which are after assigned by the same indenture. No mention was made at all of the warrant of attorney in the indenture. The following defeasance was indorsed on the warrant of attorney: "Memorandum, that the above warrant of attorney is given as a collateral security for payment of the sum of 3700 $\text{l}.$ , by the said Aubrey Charles Price to the said Thomas Bendry with lawful interest thereon, which said principal and interest monies are further secured by a grant and demise, bearing even date herewith, of the vicarages of Chertton, in the county of Oxford, and of Colerne in the county of Wilts, made between the said A. C. Price of the one part, and the said Thomas Bendry of the other. Signed, Thomas Bendry." The words of the statute of 13 Eliz. c. 20, s. 1 were "that all chargings of such benefices with cure hereafter, with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made, according to the meaning of this act, shall be utterly void."

*Wightman* shewed cause, and contended that this was a mere personal security, on which the plaintiff would have a right to sign judgment, in case default was made in paying the sum due, and thereon to issue a sequestration. All the cases which had put a construction on the stat. of Eliz. had determined that the warrant of attorney was valid, if it did not operate to charge the living itself directly. No objection could be made from the mere fact of its operating indirectly, through the medium of a sequestration.

*Erle* and *V. Lee* supported the rule, and contended that a connection was clearly apparent between the warrant of attorney and the grant and demise, and they together must be considered as forming but one security. If they were, the mere statement that the warrant was only given as a "collateral" security, could not affect it. The question here was, whether the Court on the face of the warrant could collect any intention to charge the living, although not directly, yet indirectly? If so, the Court could give no sanction to the warrant of attorney. The following cases were cited as in point. *Alchin v. Hopkins*,<sup>a</sup> *Colebrook v. Layton*,<sup>b</sup> *Saltmarche v. Hewett*,<sup>c</sup> and *Faircloth v. Gurney*.<sup>d</sup>

*Coleridge*, J.—By law nothing is more clear than, first, that ecclesiastical property is liable to be taken in execution by a proceeding which is peculiar to that sort of property; and secondly, that by the statute of Eliz. this principle is introduced, namely, that all chargings of benefices with cure, with any pension or with any profit out of the same to be yielded or taken, other than rents to be reserved on leases made according to the meaning of that act shall be utterly void. Now these two principles must be remembered. In decid-

ing cases like the present, we must take care not to protect ecclesiastical persons from a just execution for their debts, and also that we do not allow them to charge their livings within the meaning of the statute. In every case then, the question is, whether, on the face of the document, there appears to have been an execution for a debt, or for a charge on the benefice. That is the principle by which the question is to be tested. There is, moreover, this rule laid down, that the Courts will not look beyond the documents themselves, and will not receive affidavits to explain the circumstances under which they were given, but that does not vary the principle on which they act. Now apply that principle to the present case. Here, an ecclesiastical person being in embarrassed circumstances, was desirous of raising an additional sum of money, but that I think was all foreign to the transaction as it now stands between Bendry and Price. He borrowed this money of Bendry, and it is not imputed that it was not a *bond side* loan. It is not disputed that if he had given a bond for the amount, it would not have been void; or if he had given a warrant of attorney *per se*, that that would have been void; but in this case he has gone further, and has made this lease for ninety-nine years. Now that lease may be void, but there are several cases to shew that one security may be void, but not another given for the same debt. Is there then anything which makes this warrant of attorney void? It is said that the reference in the defeasance to the void deed of lease will make the warrant of attorney itself void. But they are two securities given for the same amount, and one is not void, because that amounts to a charge within the statute. It does not therefore follow that the object of the other will in itself make it void. In any of the class of cases that have been cited of annuities the securities have not been held to be void when there was a mere debt to be received, or a mere dry loan of money. They are all cases of annuities becoming due from year to year, and the party was to be enabled to get into possession at a time when nothing in fact might be due. There is then a manifest distinction as to the nature of the debt. It is contended that this is in effect a continuing charge, as the amount cannot be at once satisfied by the execution; but that is the nature of all sequestrations. However small the amount may be for which the sequestration issues, that may be the case. If it issues for only 100 $\text{l}.$ , and the living is worth 1000 $\text{l}.$  per annum, the sequestration must continue in possession for a certain time, until tithes to the requisite amount become due; and I can hardly conceive a case where the possession must not be continued for a greater or less time, but is not to continue beyond the time of payment of the debt. This case becomes then the ordinary one of an execution, and is not affected by the statute, and the rule must therefore be discharged, but not with costs.

Rule discharged.—*Bendry v. Price*, M. T. 1839. Q. B. P. C.

<sup>a</sup> 4 Moo. & Sc. 615; 1 B. N. C. 99.

<sup>b</sup> 4 B. & Ad. 578; 1 Nev. & M. 374.

<sup>c</sup> 3 Nev. & M. 656. <sup>d</sup> 9 Bing. 622.

## Common Pleas.

ACTION ON THE CASE FOR DECEIT FOR FALSE REPRESENTATIONS.—9 Geo. 4, c. 14, s. 6.

Where, in an action on the case for deceit, the plaintiff alleged in his declaration that the defendant was partner in a firm with two others, and that he made certain false representations with a view to procure goods to be advanced to the firm on credit, and the defendant pleaded that the representations were not in writing within 9 Geo. 4, c. 14, s. 6: Held, that the plea was a good answer to the action, and that the terms of that section must be taken to apply to the defendant's partners, as "other persons," within the meaning of the legislature.

Quære, whether such an action can be maintained.

This was an action on the case for deceit. The declaration stated that before and at the time of the commission of the grievances, the plaintiff carried on business as a merchant; and that the defendant and one C. M. Darlingcourt, and one F. G. Ladame, carried on business as merchants, at Paris, in the kingdom of France, under the firm of Darlingcourt and Ladame; and that the plaintiff and the said firm had had dealings with each other as such merchants, and that the plaintiff had been accustomed to give credit to the said firm; and whereas that before the time of the said grievances being committed the plaintiff had become and were suspicious of the credit and circumstances of the said firm, and had become and was unwilling to have further dealings with them and to give them any further credit as aforesaid, and would not have done so but for the false and deceitful representations of the defendant; of all which the defendant had notice; but the defendant, so being a partner in the said firm of Darlingcourt and Ladame, contriving and intending to deceive and defraud the plaintiff, and to induce him to deal with the said firm in the way of trade, and to sell and deliver to them divers goods, &c. on trust and credit, falsely and deceitfully represented to the plaintiff that the said firm was trust-worthy,—by reason of which said false representation he did induce the said plaintiff to give credit and sell goods on trust and credit to the said firm, and the plaintiff did so deal with the said firm to the amount of 3000l., and paid money to the use of the said firm to the amount of 500l.; whereas, in truth, the plaintiff could not safely trust the said firm, nor safely sell goods to them on credit, nor were they trust-worthy, and the defendant at the said time when, &c. well knew the same; and the goods were not yet paid for, and the firm was still wholly unable to pay for the same, or repay the money or any part thereof. The defendant pleaded that the alleged grievance was a representation alleged to have been made by the defendant to the plaintiff concerning the credit and ability of a certain firm, but that it was not made in writing according to the form of the statute. Demurrer and joinder.

Burston, in support of the demurrer, con-

tended that the action was well brought. There could be no doubt that fraud, accompanied by special damage, gave a right of action. Com. Dig. tit. Action on the Case for Deceit, A. I. *Pasley v. Freeman*, 3 T. R. 51, was in point, and the difficulty which there presented itself to the mind of Mr. Justice Grose did not here exist.

Tindal, C. J.—It was laid down in *Haycroft v. Creasy*, 2 East, 92, that there must be fraud as well as falsehood.

Barstow.—*Dobell v. Stevens*, 3 B. & C. 623, shewed that a plaintiff, although he had obtained the fruit of his contract, might yet sue the contractor for a false representation; and the fact of the contract having been made would be of no avail, because it was that which worked the injury upon the plaintiff. With regard to the sufficiency of the plea, the statute 9 Geo. 4, c. 14, s. 6, on which it was founded, provided that no action should be brought whereby it was sought to charge any person upon or by reason of any representation or assurance concerning the character or credit of "any other person," unless such representation was made in writing and signed by the party making it. *Lyde v. Barnard*, 1 M. & W. 115, shewed that the Statute of Frauds must be looked to as a means of giving this act its proper interpretation; and if that were the fact, it was clear that this case did not fall within the mischief intended to be removed, for here the representation was not made of "any other person," within the meaning of the act, but of the defendant himself and his partners.

*Petersdorff, contrà.*—The proposition was that a representation made by a debtor of his own trust-worthiness, afforded a ground of action, but such an action was without precedent. The cases cited bore no resemblance to that now before the Court; and the plaintiff was in this dilemma—either that the representation was made by the defendant of his own solvency, or that it was made by the defendant of "other persons," within the meaning of Lord Tenterden's Act, the 9 Geo. 4, c. 14. All these cases were resolvable into two classes: first, those like *Pasley v. Freeman*, where the representation referred to third parties; secondly, those where the representation had reference to the sale of goods to the party himself. Many authorities established that unless there was that which amounted to a warranty, a mere representation accompanying a sale of goods would not give a cause of action or create a liability; *Chandeler v. Lopus*, Cro. Jac. 4; *Roswell v. Vaughau*, Cro. Jac. 146; *Buyley v. Merrill*, Cro. Jac. 286; and the principle to be drawn from those cases was that no bare statement furnished any ground of action. All the other cases were like *Pasley v. Freeman*, and the representations had reference to the situation of some third party, and not of the defendant himself. If the proposition here contended for were allowed to be confirmed, the effect would be that the plaintiff might have a twofold right of action: first, upon the debt; and secondly, in respect of the representation made by the buyer of his own solvency. The extent of the wrong done to the creditor, how-

ever, was his inability to recover the debt, and when he had recovered that debt, that was all that the law would authorise. Either this two-fold right must exist, or a verdict in an action for the *tort* would be a bar to the action of debt, for both actions might be pending at the same time. The plaintiff could not vary his own rights or the defendant's liability by substituting one remedy for another.

*Barstow*, in reply.—With regard to the argument adduced as to the twofold remedy which the plaintiff would possess, it had no application to the case. Put the case of an action against the sheriff for an escape on mesne process. The plaintiff might recover damages which should be estimated for the escape, and the next cause tried might be against the debtor himself, and the previous action could have no effect upon the verdict in the case, even although nearly the full amount of the debt should have been recovered as damages from the sheriff. The distinction between cases of warranty and those of false representation was very great. In the latter, the falsehood must be known to the defendant; in the former, it need not.

*Tindal*, C. J.—On the view which I take of this case, it is unnecessary to have recourse to the arguments urged with respect to the declaration: I therefore give no opinion whether such a form of action as this is or is not maintainable on such representations as are here made. It seems to me, however, that the plea put on record by the defendant is an answer to the action, even if it can be maintained. The strength of the argument on the part of the plaintiff must be, that the 6th section of the statute 9 Geo. 4, c. 14, is in fact confined to cases where there must have been written contracts under the Statute of Frauds,—that it is only subsidiary to the Statute of Frauds; and that the force of this 6th section does not apply to any case except those where, if, instead of representations, it had been matter of contract only, there must have been a written agreement under the statute; and that in order to make the act apply it must be said that the defendant might have bound his partners without any writing. But it does not appear to me that this 6th section is necessarily confined to such cases, as, if there had been a contract only, it would have been within the Statute of Frauds. It is a very remarkable thing, that the Statute of Frauds is not recited in the act previous to this 6th section. The Statute of Limitations is referred to, and then in the 7th section the Statute of Frauds is mentioned, and there is a clause introduced in reference to it. Therefore although the statute of the 9 Geo. 4, c. 14, may have had in its view the principle, to render the evasion of the Statute of Frauds impossible, still I do not think that it is confined in its operation to that; and we must look to the 6th section to see what the words are which are employed, and what the intention of the legislature was. By that section it is provided that "no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct,

credit, &c. of any other person, unless such representation be made in writing." It appears by this declaration that the representation was made by the defendant alone, and it is stated on the face of it that he was a person in partnership with two others, who are named on the record, and the representation is that the firm was trust-worthy. By that representation a meaning is conveyed that each and every one of the persons who composed that firm was trust-worthy, and not that the defendant was alone so. If reference had been made by him solely to the other two parties, there can be no doubt that the case would have fallen within the words of the act; it would have been a representation of the credit and character of two other persons, separate and distinct from himself. Then does it become less a representation of the solvency of the two others, because he includes himself in it, and says that he also is trust-worthy? I think that it clearly does not, and then, in fact, it appears to me, to be a representation respecting two parties not included in this action; and as far as my judgment goes, this plea is available.

*Bosanquet*, J.—I was much struck at first with the observation, that the object of this statute was to carry into effect the spirit of the Statute of Frauds, and I have no hesitation in saying that I did expect, that on turning to the act I should have found that that statute was recited previously to this provision. I find that the Statute of Limitations is referred to, and then the act goes on to other subjects, and it is not until after the sixth section, which is the material one here, that a clause is inserted containing any mention of the Statute of Frauds, when the object (of any reference being made to it) is to carry into effect the spirit of its provisions, but not in respect to this subject. In this case the question is, whether the sixth section is applicable to the circumstances alleged. It appears to me that it is applicable, not only in its words but in its spirit. The declaration alleges that the defendant being a member of a certain firm, made representations to the defendant as to the credit of the firm, and that it was trust-worthy. There are only two names mentioned in the title of the firm, but the defendant is stated to be a partner, and the goods are therefore delivered to him as well as to them, and he is liable if any contract is made. But it would be very extraordinary, if, when any business was carried on under a particular firm, a representation was made by one of the company that the firm was trust-worthy or solvent, for the purpose of obtaining goods to be delivered, that it should be evaded by shewing that that person was a member of the firm. This was a representation as much with respect to these two persons whose names are mentioned as to the defendant himself. It must be supposed to be made with the intent that the goods shall be delivered, and "that other persons" may obtain credit or money, and the fact of his being a member of the firm does not alter the case.

*Coltman*, J. concurred.

*Dereux v. Steinkiller*, M. T. 1839. C. P.

CAUSE LISTS.—*Hilary Term, 1840.*

## Queen's Bench.

NEW TRIALS remaining undetermined at the end of the Sittings after Michaelmas Term, 1839.

*Hilary Term, 1838.*Rawlins v. Desborough (*pt. ad.*)*Easter Term, 1838.*

Meegh v. Clinton  
 Doe d. Cope and others v. Hill,  
 Esq. and others  
 Silvester v. Walker  
 Cooke v. Walker  
 Pugh v. Griffith, Esq.  
 Evans and ors. v. Jones and an.  
 Doe d. Milward and an. v. Wood  
 Rawlinson v. Elliott  
 Mills v. Claridge, Knt. and ors.  
 Hitchcock v. Chaplin  
 Wright v. Waterfield  
 James v. Phelps  
 Latch v. Thomas Wedlake and  
 Lewis Thomas  
 Frank v. Edwards  
 Eaton and others v. Jervis  
 Cale v. Cresswell

*Trinity Term, 1838.*

Willis v. Bennett  
 Rowe v. Brookes  
 Cadby v. Martinez  
 Woolf v. Beard  
 Brown and others v. Blakiston  
 Allen, a pauper, v. Flicker & an.

*Michaelmas Term, 1838.*

Sykes v. Nipper  
 The Queen (*two cases*) v. Thomas  
 Deane and others  
 Rothschild v. Currie  
 Rouch, assignee, v. The Great  
 Western Railway Company  
 Corke v. Walker  
 Palmer v. Hembry  
 White v. Teal  
 Levy v. Notekin  
 Allan v. Gomme and another  
 Nicholls v. Baker  
 The Queen v. Inhabitants of  
 Barton  
 Cirket v. Wing, clerk  
 Chambers v. Porter  
 Eaden v. Berry  
 Evelyn, Bart. v. Glover, clerk  
 Luxton, assignee, v. Guppy  
 Charlton v. Alway  
 Baylis v. Lawrence  
 Taylor v. Sheldon  
 Doe d. Hartwright and others v.  
 Fereday  
 Connell, one of the registered  
 public officers, &c. v. Sawyer  
 and others, sued with Price  
 Connell, on behalf of the North-  
 ern and Central Bank of Eng-  
 land, v. Price, sued with ors.  
 Reynolds, one of the public  
 officers, &c. v. Robinson & an.

Hartley v. Wharton  
 Leadbeater v. Hart  
 Bamford v. Shuttleworth & ors.  
 The Queen v. Inhabitants of  
 Maryport  
 Doe, several dems. of Nicholson  
 and others, v. Welford  
 Christie, ass. v. Unwin and an.  
 The Queen v. Geo. F. Muntze  
 and others  
 Boxanquet and others v. Seaton  
 Doe d. Sanforth v. Belfield & an.  
 Carne and others v. Street  
 Fox, admor., &c. v. Waters and  
 another, exors., &c.  
 Skeate v. Beale  
 Podmore v. Lawrence, clerk  
 F. Atkins v. Kilby and another  
 Doe d. Wynne, Esq. v. Parry,  
 clerk, and others  
 Evans v. Rees, Esq.  
 Davies v. Stacey and another

*Hilary Term, 1839.*

The Queen v. Sarah Virrier  
 Sims, admix., &c. v. Thomas,  
 Esq. M.P.  
 Ladd v. Thomas and another  
 Smyth v. Bowrs  
 Poole v. Crowder and another  
 Geary v. Harvey, Esq. M.P.  
 The Birmingham, Bristol and  
 Thames Junction Railway Co.  
 v. Locke  
 Hey v. Wyche  
 Lady Tufton and another v.  
 Whitmore and another  
 Baker v. Baker  
 Sadler and others v. Whitmore  
 and others  
 Bracey v. Carter  
 Abrahams v. Skinner  
 Hart v. Crowley

*Easter Term, 1839.*

Edan v. Dudfield  
 The Aylesbury Railway Compy.  
 v. Thompson  
 Delisser v. Towne  
 Lynch, an infant, v. Bardin  
 Hawkins v. Paxton  
 Doe d. Ive v. Scott and another  
 Milligan v. Wedge  
 Bennett, exor., &c. v. Burton,  
 clerk  
 Boorman and others v. Brown  
 Thompson and ors., exors., &c.  
 v. Osborne  
 Same v. Same  
 Rogers v. Custance  
 Enys v. Bennetts and others  
 Bult and ors. v. Morrell and ors.  
 Doe d. Long and ors., Church-  
 wardens, &c. v. The Dean  
 and Chapter of Peterboro'.

Knight v. M'Douall and others  
 (*In Replevin*)

Doe d. Norton and others v.  
 Webster

Williams, Wo. extrix., &c. v.  
 Posbrooke

Adnam v. Thomson

Boyce v. Ogle

Taylor v. Henniker, Bart. (*Cave*)

Same v. Same (*Trespass*)

White v. Cutts

White v. Donald

Doe d. Allen v. Allen and an.

Hoare v. Scott

Smith v. Stanley

Lead v. Summers

Doe d. Thomas v. Beynon

The Mayor, Alderman, and Bur-  
 gesses of the City of Chester  
 v. Peers (*In Debt*)

Bunting v. Barlow

Doe d. Crowther v. Drew

Jones v. Downman

Jones v. Jones (*In Replevin*)

Adams v. Jones

King v. Burrell

Rix v. Borton, clerk, and an.

Mitchell v. Foster

Doe, several deincees, Thomson  
 and others v. Amey

Smith, Wo. v. Smith

Doe d. Garrod v. Olley and an.

Doe d. Farmer, the elder, v. Howe

Haigh and another v. Brooks

Bayley, gent. one, &c. v. Ashton

The Queen v. Sharp

Ridgway and others v. Ewbank  
 and another

Tomlin v. Bowshill

Lockwood, clerk, v. Wood

Same v. Lund

Culverson v. Melton

Bentham v. Martindale

The Queen v. Stauper and an.

Stephenson v. Stainthorpe

Gibson v. Kirk

Martindale v. Smith

Powning v. Leach and another

The Queen v. Walter Irvine

*Trinity Term, 1839.*

Dixon v. Thompson, sued, &c.

Banks v. Rough, sued, &c.

Nathan v. Irwin

Bacon v. Smith and another,

assees., &c.

*Michaelmas Term, 1839.*

Poole v. Siddon and another

Stapleton v. Harper

Doe d. Lister and ors. v. Goldwin

Lewis v. Reilly and another

Lane v. Mullins

Wilcoxon v. Walker

Meredith and an. v. Simmons

Slisfield, extrix., &c. v. Rivolta  
Hantrey and ors., assess., &c.  
v. Cobb  
Chaney v. Payne  
Birmingham, Bristol, & Thames  
Junction Railway Company v.  
Holford  
Abington, Esq. v. Lipcomb  
Doe d. Angell v. Angell—Raw-  
lings, tenant  
Same v. Same—Barham, tenant  
Gillon v. Watt  
Carratt v. Morley and others  
Same v. Same  
Bonner, clerk, &c. v. Prest  
Beadsworth v. Torkington  
Doe d. Sturges v. Ward and ors.  
Fosbrooke v. Fosbrooke  
Lock v. Sellwood  
Sellwood v. Mount and others  
*(In Trespass)*  
Green v. Neale and an., since  
deceased, sued with, &c.  
Wintle v. Freeman  
Same v. Same  
Doe d. Cozens v. Cozens  
Rickford and others v. Skewes  
Webber v. Richards  
Neck, exor., &c. v. Smart  
Doe d. Fleming, Esq. v. Snook  
and another  
The Queen v. Brown, clerk,  
and another  
Baron de Rutzen and wife v. Farr  
Doe d. Davies v. Davies  
Lang and ors., surviving extrix.  
and exors., v. Nevill and an.  
Fisher, clerk, v. Birrell and an.  
The Queen v. Warkman, clerk  
Brunton and ors. v. Hall  
Nixon v. Nanney, Esq.  
Smith v. Burdekin  
Richardson v. Dunn  
Fielden v. Sidden and others,  
exors., &c.  
The Master, Watdens, and So-  
ciety of the Art and Mystery  
of Apothecaries of the City of  
London v. Greenough  
Green v. Smithies

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## COURT IN BANCO.

PEREMPTORY RULES  
For Hilary Term, 1840.

## FIRST DAY.

Wilton, gent. one, &c. v. Chambers  
Bothell v. Wordsworth and an.  
Goddard v. Trevanion and an.  
The Queen v. Justices of Cheshire  
Knight v. McDonnell and others  
*(In Replevin)*  
Same v. Same *(ditto)*  
Floud, the younger, v. Carter  
Gibbs v. Trevanion and another  
Savage v. Same  
The Queen v. Birmingham Canal  
Company  
The Queen v. John Harris  
Trevanion and ano. v. Holloway,  
*(In Error)*  
Same v. Same *(ditto)*  
Same v. Martins *(ditto)*  
Same v. Savage *(ditto)*  
Same v. Gibbs *(ditto)*

The Queen v. Justices of Lanca-  
shire, appointment of Over-  
seers of Great Bolton  
The Queen v. The same, appoint-  
ment of Overseers of Charlton  
Ex parte Geo. Fleetwood, In re  
Edward Littledale and another  
The Queen v. The Trustees of  
Harnham Roads.  
The Queen v. The Priors Ditton  
Inclosure Commissioners, &c.  
Ex parte Caine and another, in the  
matter of Alfred Leigh and an.  
The Queen v. The Mayor of York  
The Queen v. The Commercial  
Railway Company, (Ex parte  
Wilson,  
The Queen v. North Midland  
Railway Company  
Firth v. Harris

SECOND DAY.

The Queen v. The Justices of  
Manchester, appointment of  
Overseers of Manchester  
Evans v. Okell  
The Queen v. Justices of Middle-  
sex  
The Queen v. Justices sitting at  
the Hatton Garden Police Office  
The Queen v. Justices of Sussex  
The Queen v. The Mayor of  
Newbury  
Ord and an. v. Barrow and an.  
Hunter v. Hickes  
Plummer v. Hudson  
Jolly and another v. Baines  
The Queen v. Mayor &c. of War-  
wick  
The Queen v. The Lords and  
Steward of the Manor of  
Whichford  
Head v. Baldrey  
The Queen v. John Cozens and  
twelve others  
The Queen v. The Leeds and  
Liverpool Canal Company

THIRD DAY.

Gibbs v. Gray  
Coils and others v. Coates  
Doe d. Phillips and an. v. Roe  
The Queen v. Churchwardens of  
Manchester  
Lord Howden v. Simpson, Knt.  
The Queen v. The Gloucester and  
Birmingham Railway Co.  
The Queen v. The Mayor &c. of  
Poole  
Maze and another v. Harrison  
The Queen v. R. E. Broughton,  
Esq., one of the justices of  
Middlesex  
The Queen v. The North Union  
Railway Company

FOURTH DAY.

The Queen v. The Mayor &c. of  
Derby.  
The Queen v. John Oldfield,  
David Scott, John Griffiths,  
Edward Foulkes, and Henry  
Davies  
Bartlett, the younger v. Jolly

PIFTH DAY.  
The Queen v. Thos. Lee and an.

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## BAIL COURT.

PEREMPTORY RULES  
For Hilary Term, 1840.

## FIRST DAY.

Archer v. Kearse  
Coull v. Hall and another  
Coull and another, executors v.  
Hall and another  
Doe several demises of Mudd and  
another v. Roe  
Owen v. Williams  
Fletcher v. Marillier and another,  
sued &c.  
Wright v. Lewis and another  
Wilson, administrator, &c. v.  
Knapp and another  
Doe dem. of Wright and others  
v. Smith  
Robbins extrix. v. Robinson  
Doe on the joint and sev. dems. of  
Sabin and others (by their next  
friend Robert Espie, v. Sabin  
Doe d. Bovan v. Deere  
Mitchell v. Law  
Rising, the yr. v. Dolphin, Esq.  
Herring v. Dorrell and another  
The Queen v. William Buller  
The Queen v. Justices of Suffolk  
The Queen v. The Sheriff of Sur-  
rey, Smith and an. v. Neely  
The Queen v. The Justices of  
Middlesex (Higham appeal)  
The Queen v. The Justices of  
Herefordshire  
The Queen v. Inhabitants of  
Walton

## SECOND DAY.

Gray admr. &c. v. Leaf exor. &c.  
Neale v. Postlethwaite  
In the matter of Arbitration be-  
tween W. Jardine and R. Owen  
J. M. Archer by G. M. Morris,  
his next friend v. Blyth and an.  
Kerr the elder, and ors. v. Ford  
Sidebotham and another v. Platt  
the younger, sued &c.  
Watkins v. John and another  
Doe several demises of Stephens  
and others v. Northey  
Turner v. Harman  
Ford v. Middleton  
Ex parte John Peter Holloway,  
Esq., and also Anne Holloway,  
in the matter of Richard Att-  
wood, gent., one &c.

## PIFTH DAY.

Doe dem. Pitcher v. Roe  
Same v. Same

## SPECIAL PAPER.

Marked † are special cases,  
thus \* special verdicts, and the  
rest are demurrers.

† Archbishop of York and others  
v. Trafford and others  
† Bruce and the Bath River  
Navigation Company v. Willis  
and others

+ Mitchell v. Ede and others  
 • Holdsworth Esq. v. The Mayor &c. of Dartmouth  
 Davis v. Holding  
 Hatch v. Trayes  
 Doe d. Blewitt otherwise called &c. v. Phillips  
 Smales v. Tyerman  
 Doe d. Batchellor v. Rainey  
 Bloor and another v. Cox and an.  
 Kirk v. Thompson  
 Bignold and others v. Parken and others  
 Whyte, admor. in person v. Rose  
 + Hawthorn and others, assignees &c. v. The Newcastle-upon-Tyne and North Shields Railway Company  
 Lewis v. Higgs  
 Lane v. Chapman  
 Cleaton, the younger v. Bushey  
 Watson v. Kightley, gent.  
 Children v. Mannerling  
 Rogers v. Norman  
 Bottrell v. Wordsworth  
 + Doe d. Lord Grantley v. Butcher and others  
 Emms v. Cole

Dempsey v. Homfray  
 Little v. Thomson  
 Dowell v. Hodgson Esq. and an.  
 Savory ass. &c. v. Chapman Esq.  
 Hasledon and another v. Almond  
 Liddle v. Brownson  
 Horner v. Keppell  
 Strachan, ass., &c. v. Thomas, Esq.  
 Bayntun v. Bayntun  
 White v. Ruby  
 Friend, who sues &c. v. Butterfield  
 Bowler v. Nicholson  
 • Doe d. Sabin and ors. v. Sabin  
 Billing v. Suffell  
 Harper v. Janson the younger  
 Jones and another v. Edwards  
 Woodland and another, assignees &c. v. Fuller and another  
 + Doe d. Booley and others v. Roberts  
 England v. Davidson  
 Skipp v. Lockwood  
 Dayrill v. Hoare and others  
 Scott v. Same  
 Levy v. Duthie  
 Same v. Duncombe Esq.

Tidd v. Foskett  
 Bernhard v. Warwick  
 + Doe d. Lean v. Lean and ors.  
 Price and wife v. Rolt and wife  
 Colls and others v. Dauncey  
 . first action  
 Same v. Same second action  
 Stiff v. Golding  
 Field v. Adames and others  
 Fisher v. Ford  
 Kinnersley v. Quested  
 Ford v. Lefevre  
 + Bennett, exor. &c. v. Burton  
 Sowdon v. Cooper  
 Thompson v. Few  
 + The Chancellor &c. of the University of Oxford, and the Mayor &c. of the City of Oxford v. Cook  
 Hewitt v. Hewitt  
 + Andrews v. Marris and an.  
 Bridgewood, assignee &c. v. The Company of Proprietors of the Navigation from the Trent to the Mersey of the Stoke Basin Wharf, at Stoke-upon-Trent, in the county of Stafford

### Common Pleas.

REMANET PAPER.  
*Enlarged Rules.*  
 TO FIRST DAY.  
 Murdock v. Croxon  
 Murdock v. Taylor  
 Shaw v. Horsfall  
 Painter v. Linsell and another  
 Miace v. Vaux  
 Cole v. Grove and another  
 Gingell v. Bean  
 TO FOURTH DAY.  
 Dickinson and another v. Forster  
 In re Blair  
 Seeley v. Ellison  
 Tilleard and another v. Cave  
 Ford v. Cave  
 Ellice v. Cave  
 TO FIFTH DAY.  
 Whittenbury v. Law Pub. Off.  
 TO SIXTH DAY.  
 Jones v. Corry, clerk, and ors.  
 Medley and others v. Pritchard and another  
 Until Injunction } Poll v. Rogers be dissolved.

NEW TRIALS  
*Of Michaelmas Term, 1838.*  
 Dart v. Westcott and others  
 Attwood v. Taylor and others  
 Same v. Same.  
 NEW TRIALS  
*Of Hilary Term last.*  
 Barron, survivor v. Fitzgerald  
 Long v. Bilke  
 Anderson v. Weston  
 Green and an. ass. v. Cunnew  
 Gibson and ors. asses. v. Bennett  
 Gould and others v. Oliver  
 De Pinna v. Carroll and an.  
 Steinkeller v. Newton  
 Fawcett and an. v. Frost and an.

Philpotts & an. v. Procter & an.  
 Rees and an. asses. v. May  
 Roberts v. Snell  
 Harrison v. Fane  
 Maund v. Stonehouse and an.  
 Baylis v. Strickland and others  
 Doe (Howell) v. Thomas  
 Doe (Williams and ors.) v. Lloyd  
*Cur. Ad. Full.*  
 Bonzi v. Stewart  
 Same v. Same  
 Earl Mansfield v. Blackburne  
 Same v. Same  
 Newton and ux v. Harlam  
 Delvaux and another v. Steele  
 Morrell v. Martin.  
 Beckett v. Wood  
 Luckin v. Simpson  
 Brook and others, assignees, v. Mitchell and others  
 Morgan and another v. Miller, to be mentioned.

DEMURRER PAPER.  
 Saturday Jan. 11  
 Monday 13 } Motions in  
 Tuesday 14 } Arrest of  
 Wednesday 15 } Judgment.  
 Thursday 16  
 Friday 17th.—Special Arguments.  
 Lehmann v. Roagmont and an.  
 Samson v. Rhodes  
 Smith v. White  
 Cockburn and another v. Wright and others, executors  
 Carswell, admor. v. Farncomb  
 Doe (Cape and others) v. Walker  
 Pogson v. Thomas  
 Jenner v. Nash  
 Hunnyburn v. Mitchell and an.  
 Bruce, jun. v. Waite and another  
 Low v. Stocken  
 Thornton v. Jenyas, clerk, & ors.  
 Pilbeam v. Briggs  
 Lucas v. Easter

Poulter's Company v. Phillips  
 Houlditch and another v. Duthie  
 Gale v. Davis  
 Chew and another v. Eldridge  
 Hinde and others v. Gray  
 Houlditch and another v. Duncomb, M. P.  
 Middleton v. Chambers  
 Hodges v. Same  
 Waller v. Lacy  
 Ashdown v. Burges  
 Bristow v. Fairclough  
 Thompson & an. Farden & ors.  
 Walbanche v. Allen, jun.  
 Smith and others v. Nicholles  
 Billing v. Kightley  
 Crawshay and others v. Barry  
 Hammond and ors. v. Lowther  
 Brundew v. Barnett and others

Hallewell and another v. Morrell,  
 sued with others  
 Hall v. Bainbridge  
 Doe (Burin) v. Charlton  
 Acland v. Pring, executrix  
 Williams v. Baker  
 Barrett v. Stockton and Darlington Railway Company  
 Crozier v. Smith  
 Grimshaw v. Pickup  
 Gould v. Leah  
 Wood v. Morewood  
 Balmanno and others v. Hands  
 Williams v. Morgan  
 Hawkins v. Girdler  
 Scales and others v. Hands  
 Same v. Thompson  
 Saturday 18th January  
 Monday 20th —

Tuesday 21st —  
 Wednesday 22d *Special Argmts.*  
 Gwynne v. Davy and another  
 Cowan and another v. Braidwood  
 Pothouier, admor, v. Sanders  
 Crowe and an. ex. v. Martin  
 Davis v. London and Blackwall Railway Company  
 Smith v. Tanner and another  
 Billing v. Keightley  
 Thursday 23d January  
 Friday 24th *Special Argmts.*  
 Saturday 25th  
 Monday 27th  
 Tuesday 28th  
 Wednesday 29th *Special Argmts.*  
 Thursday 30th  
 Friday 31st End of Term.

## Exchequer.—Sittings in Hilary Term, 1840.

	Banc.	Equity.
Saturday, Jan. 11,		
Monday — 13,	Peremptory Paper	Lord Abinger
Tuesday — 14,	—	—
Wednesday — 15,	—	Lord Abinger
Thursday — 16,	Circuits chosen	—
Friday — 17,	—	—
Saturday — 18,	Errors and Crown Cases	Lord Abinger
Monday — 20,	Special Paper	—
Tuesday — 21,	Errors	Lord Abinger
Wednesday — 22,	Special Paper	—
Thursday — 23,	—	—
Friday — 24,	—	—
Saturday — 25,	—	Lord Abinger
Monday — 27,	Special Paper	—
Tuesday — 28,	—	—
Wednesday — 29,	—	Lord Abinger
Thursday — 30,	—	Lord Abinger
Friday — 31,	—	—

## PEREMPTORY PAPER.

Monday, the 13th January, 1840.

To be taken at the Sitting of the Court.

Thomas v. Puntan  
 Marks v. Benjamin  
 Robinson v. Iveson  
 Pugh v. Kerr, Esq.  
 White v. Marples  
 Classey v. Drayton  
 Classey v. Drayton  
 Williams v. Griffiths  
 Gyde v. Pettitt and another  
 Keye v. Thomas  
 Cross & ors. v. Law, public officer  
 Buckley, public officer v. Marston, public officer  
 Leicester v. Law, public officer  
 Rodrick, public officer v. Law, public officer  
 Rodrick, public officer v. Law, public officer  
 Cleasby v. Law and another  
 Roberts v. Hempson  
 Marples, the elder v. Plant  
 Clark v. Peters

## SPECIAL PAPER.

Remarks from Michaelmas Term, 1839.

Standing for Judgment.

Lacey v. Ingram, dem.  
 (Heard 13th Nov. 1839.)

Gerard and an., assignees, &c. v. Nightingale, special case  
 (Heard 18th Nov. 1839.)

## For Argument.

McKenzie v. Cockshott, sp. case

## NEW TRIAL PAPER.

Standing for Judgment.

Moved Easter Term, 1839.

Davies v. John Humphreys  
 (Heard 11th June.)

Moved Michaelmas Term, 1839.

Cornfoot v. Fowke  
 Hebblewhite v. M' Morine  
 (Heard 14th Nov.)

Sheldon v. M' Morine  
 (Heard 14th Nov.)

## For Argument.

Moved Easter Term, 1839.

Pratt v. Arnold  
 Wingate v. Wait, clerk  
 Davies v. Davies  
 Young v. Higgens, Esq.  
 Stockdale v. Dunlop  
 Sewell v. Roaby  
 Hindle v. Pollitt  
 Ward & an. v. Guppy & an.  
 Callan v. Lloyd

Weatherill v. Smith  
 Marples, the elder v. Plant  
 Brown v. Tapscott  
 Doe d. Older v. Tipper  
 Chapman & ors. v. Turner  
 Johnson v. Reid, Esq.  
 Doe d. Daniel & ors. v. Woodroffe  
 Birch v. Barton  
 Penfold v. Clifford  
 Marshall v. Lynn  
 Peters v. Fleming  
 Scarfe v. Halifax, Esq.  
 Cobbold, ass. v. Grimwood  
 Humphreys v. Price  
 Arthur v. Barton  
 Edwards v. Johnson and others  
 Doe, several dem., Petters and others v. Samuels  
 Bloor v. Davies and another  
 Miller v. Rennington  
 Wickham v. Hawker and another  
 Parmiter v. Coupland  
 Doe d. Curzon & ors. v. Edmonds  
 Eve and another v. Rumboll  
 Doe d. Payne v. The Bristol and Exeter Railway Company  
 Fowler & an. v. Round, admor.

Moved after the 4th day of Michaelmas Term.

Waugh v. Cope

Lewis v. Myers

Quarman v. Burnett and another

## Court of Review.

## THE GENERAL LIST OF PETITIONS IN BANKRUPTCY.

Jan. 11, 1840.—Motions only.

## Adjourned Petitions.

Huth v. Pemberton  
 Brown v. Cavenagh  
 Appach v. Ashley  
 Edwards v. Edwards, amended

—

New Petitions answered for Jan. 11,  
1840.

James v. James  
 Coleman v. Hood  
 Coates v. Coates  
 Hill v. Knight  
 Scott v. Douglas  
 Leaf v. Limpson

Boust v. Porster  
 Varnish v. Burghart  
 Garrett v. Garrett  
 Read v. Rudston  
 Dakin v. Dakin  
 Bower v. Bower  
 Cusel v. Cusel  
 Gerlach v. Gerlach

COMMON LAW SITTINGS,  
After Hilary Term, 1840.

## Queen's Bench.

For Sittings in Term, see p. 192, ante.

MIDDLESEX. After Term. LONDON.

Saturday .. Feb. 1 | Monday .. Feb. 3  
                         To adjourn only.

The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will probably be postponed from the 13th and 16th of January to the adjournment days; and all other Causes on the lists for the 13th and 16th of January will be taken from day to day until they are tried.

Undefended Causes only will be taken on January 29th.

Short defended as well as undefended Causes entered for the sitting on January 30th will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Causes standing over with Judgment of the Term in Middlesex will be taken on the 1st of February.

## SHERIFFS' COURTS—LONDON.

Notice is hereby given that the Judge of the Sheriffs' Courts, London, has appointed the undermentioned days for the *Trial of Issues*, directed to be tried before him under the provisions of the Law Amendment Act, of the 3d and 4th William the Fourth, cap. 42: and all writs for the trial of such issues must be left at the Sheriffs' Court Office, in Whitecross Street, four days before the day of trial.

By order of the Judge.

1840.

January	- Thursday,	9th - Friday,	24th.
February	- Friday,	7th - Thursday,	20th.
March	- Thursday,	5th - Friday,	20th.
April	- Friday,	10th - Thursday,	30th.
May	- Thursday	14th - Friday,	29th.
June	- Thursday,	18th - Friday,	26th.
July	- Friday,	10th - Thursday,	23rd.
September	- Thursday,	17th - Friday,	25th.
October	- Thursday,	22nd - Friday,	30th.
November	- Friday,	13th - Thursday,	26th.
December	- Thursday,	10th - Friday	18th.

The Court will sit at Guildhall, at Eleven o'clock precisely.

## HILARY TERM EXAMINATION.

Of the 162 persons who have given notice of admission for this term, there are 30 who have been already examined, which would reduce the number of candidates to 132. Then there are 5 who have given notice of examination but not of admission; and 3 who have given notice of admission but not of examination; making a difference of 2 to be added to the above number, and increasing the total to 134.

## THE EDITOR'S LETTER BOX.

It would be too much to expect that we should please the taste of every reader. "A Subscriber" has seldom to complain of the articles he mentions: they are "few and far between;" and though they please not him, are not without their use.

A letter on the Reasons for the (supposed) Unpopularity of Attorneys shall be attended to.

In answer to L. W., it is held to be necessary that the affidavits of service of clerkship, &c. made preparatory to admission, should be on stamps; and admission in one of the three Superior Common Law Courts, will entitle the party to admission in the others, on signing the Roll of the other Courts.

The letters relating to a Law Library, Sheriffs' Poundage, and the Wills Act, shall be attended to.

J. W. T. should apply to a solicitor, who will make the proper searches for him.

*The Legal Almanac, Remembrancer, and Diary, for 1840*, contains—A Law Calendar, adapted peculiarly to the use of the Profession; including the Times of Legal Proceedings, Terms, Returns, Sittings, and Sessions; Elections and Proceedings under the Reform, Jury, Corporation, Vestry, Highway and other Acts, &c.; Lists of the Judges and Officers of all the Courts; Holidays at the Law Offices and Times of Attendance (as lately altered); Magistrates and Commissioners; Precedence of the Bar, and Barristers called in 1838—9, with dates of call; Law Societies; Articled Clerks examined; Town Clerks, Clerks of the Peace, Clerks of Magistrates and Perpetual Commissioners; Colonial Judges and Law Officers; List of the London Bankers, Stamps, &c.; with a Diary for 1840.

# The Legal Observer.

SATURDAY, JANUARY 18, 1840.

— “Quod magis ad nos  
pertinet, et nescire malum est, agitamus.

HORAT.

## LETTERS TO THE LORD CHANCELLOR ON THE ARREARS OF BUSINESS IN EQUITY.

LETTER VI.<sup>a</sup>

My Lord,  
About the close of the year 1838, and at the beginning of the year which has just come to an end, I had the honour of addressing to your Lordship, through the medium of these columns, certain letters on the state of the Court of Chancery, and I am now desirous most respectfully of renewing the subject: and I have certainly one satisfaction in doing this,—the solitary one, I am sorry to say, that the matter affords—that I am addressing my complaint to no unwilling ear; that the heads of the Court, and more especially your Lordship, may at this moment be engaged in devising a remedy for the existing grievances; that they will throw no obstacle in the way of the fullest and most open inquiry.

There are indeed many circumstances which favour the complete and satisfactory settlement of the question. In the first place it is stripped of all party feeling. The truth of this fact lies on the surface. Lawyers, on all other political subjects far as the poles asunder, unite on this. In former times, this question was made the chosen ground on which to fight the existence of an administration, and its agitation did mainly tend to break up and loosen Lord Liverpool's government. Whenever it was discussed there was a strong muster on either side,—the House crammed,—the lobbies thronged with busy inquirers,—the speeches all prepared—all the parts in the political drama strongly cast;—but in

the last session how different a scene was presented! Mr. Pemberton contented himself with making a short statement in the absence of the Attorney and Solicitor General, who had gone away not expecting any thing of importance to occur! and Mr. Freshfield (to whom the friends of Chancery Reform are under great obligation) having, after repeated postponements, with difficulty obtained a hearing, was, if I remember aright, *twice counted out*; and assuredly, if a similar power existed among the orders of the House of Lords, the debate there might have been cut short after a similar fashion. I heard every word of the somewhat long debate on Lord Lyndhurst's motion, and certainly, no important matter was ever discussed more quietly. The House, which was tolerably full at the commencement of Lord Lyndhurst's speech, gradually became in the course of it, what in Parliamentary language is called “thin.” Lord Brougham, who on that evening lost his usual animation, having spoken, went away to dinner, leaving your Lordship and Lord Langdale almost deprived of noble auditors. The Duke of Wellington added to his former reputation for endurance, by sitting it out, backed by Lord Ellenborough; while the government side of the House was represented by Lord Duncannon, Lord Melbourne having departed. Well might Lord Langdale observe that “no party feeling was displayed;” and I am heartily glad of it, for it is not in crowded houses that questions are always best settled, or the nice points in a measure of this sort adjusted and deliberated on. I do not regret, then, that so little interest is shewn within the walls of Parliament in the matter, as I am sure that your Lordship will not be misled by this circumstance to suppose for one moment

<sup>a</sup> See the previous Letters in the 17th Vol. of the Legal Observer.

that this feeling, or want of feeling, exists without its walls. The interest is here most intense. Thousands of persons read your Lordship's speech with the utmost eagerness; and they read it, I am satisfied, with only one regret,—that it was not acted on in the last session.

Permit me, my Lord, to endeavour to state what I conceive your Lordship's views to be on this subject, as stated in the speech just referred to, made in the House of Lords in June last.<sup>b</sup> You state your opinion of the expediency of establishing an appellate jurisdiction, very different from that which is at present in existence—that it would be highly advantageous that the head of the Court of Chancery should exclusively direct his attention to the business of that court—that a permanent judge should be appointed, who, holding the Great Seal, should preside over the proceedings of the House of Lords, and over the appellate jurisdiction of the Privy Council: that your Lordship, although you gave the whole of your time to the Court of Chancery, when parliament was not sitting, was not able to dispose of the existing business; that if you had nothing else to do, it would take three years to get rid of the *causes aloses*, then before the court; that justice could not be fully administered under the present system; that the mere appointment of an additional judge, would not be sufficient to meet the exigencies of the case; that "it was only half a plan, and not half a plan;" but that still you would consent to this rather than that nothing should be done.

Now, my Lord, I humbly venture to express my admiration of these sentiments. I conceive the consent to take the additional judge, is merely to be understood as applicable to the end of the last session, and as confined to that, otherwise, I should respectfully object to it. But with all the preceding part of the speech, I entirely concur. You have here given a brief outline of the desired reform,—a remodelled appellate jurisdiction in the House of Lords—a permanent Lord Chancellor in the Court of Chancery, are the required judicial changes. Reform in the Six Clerks' and Masters' Offices, and in the taxation of costs, make up the list. There can be no satisfactory settlement of the question unless all these matters be attended to; and I sincerely trust, as your Lordship says, we shall not have "half a plan, and not half a plan."

I now respectfully draw my present letter

<sup>b</sup> See this speech with the rest of the debate, reported 18 L. O. 161—169. Ed. L. O.

to a close. Before it is printed, her Majesty's speech on the opening of parliament, will have been read by your Lordship to the assembled Lords and Commons. It may possibly contain some direct allusion to the Court of Chancery. But at any rate this is unimportant, as it is generally understood that your Lordship is prepared with a measure of Chancery Reform, which will shortly be introduced. That it may be in accordance with the outline already alluded to I sincerely pray.

I have the honour to be  
My Lord,  
Your Lordship's most humble servant,  
A BARRISTER.

*Lincoln's Inn, Jan. 14, 1839.*

## PRACTICAL POINTS OF GENERAL INTEREST.

### JOINT STOCK COMPANY.

Pursuant to our practice, of giving every new case relating to joint stock companies, we give the following:

*Cripps* moved for a rule to compute in the present case. It was an action for calls on shares in the railway. By the act constituting the company, it was competent to recover interest on the amount of the calls, to be calculated from the day on which the calls became payable, down to the actual time of payment. The defendant had suffered judgment by default. The question was, whether this was a case in which the company might have a rule to compute, or must execute a writ of inquiry. *Williams*, J.—I think that it is too involved and intricate a matter for computation before the Master, and, therefore I think I ought not to grant the present rule. Rule refused.—*Cheltenham and Great Western Union Railway Company v. Fry*, 7 Dowl. 616.

## ON THE LAW AS TO MARRIAGES ABROAD BETWEEN ENGLISH SUBJECTS WITHIN THE PROHIBITED DEGREES.

(Continued from p. 199.)

With a view of simplifying the question as to the effect of intended evasions of our law, and the better to consider in what sense any *bona fide* foreign domicile can be required, we have, up to this point, purposely omitted to observe on two other exceptions to the prevalence of the *lex loci* in cases of foreign marriages. The first of these has not yet, as far as we know, been decided upon in any country. The second arises from the decision in *Lolly's case*, followed in part in one or two other cases; and is not known

anywhere else, we believe, than in England. If we understand the general rule to mean, by the *lex loci* which is to be noticed, the law of a civilized place and no other;<sup>a</sup> then as to the accuracy of either of these exceptions, we ourselves, entertain much doubt.

The first exception is that alluded to in the second rule laid down by Mr. Burge, and extracted above. "If," said one of the American courts, "a foreign state allows of marriages incestuous by the laws of nature as between parent and child, such marriage would not be allowed to have any validity here. But marriages not naturally unlawful, but prohibited here by the law of one state, and not of another, if celebrated where they are not prohibited, would be held valid in a state where they are not allowed. As in this state, a marriage between a man and his deceased wife's sister is lawful, but it is not so in some states; such a marriage celebrated here, would be held valid in any other state, and the parties entitled to the benefit of the matrimonial contract."<sup>b</sup> The jurists seem to have taken the same ground, and to have considered that there is great difficulty in saying that the marriage of collaterals related by consanguinity, but beyond the degree of brother and sister, can be prohibited on the ground of their repugnancy to nature. We have already cited a passage from Grotius, with reference to marriages between brother and sister by affinity, and uncle and niece by blood. He afterwards states a singular rule laid down in the canon *Eliberinus*, Ix, "Si quis post obitum uxoris suæ, sororem ejus duxerit and ipsa fuerit fidelis, per quinquennium eum à communione abstinet; eo ipso ostendens manere vinculum matrimonii."<sup>b</sup> Judge Story, on referring to this doctrine as to incest, says, "But when we speak of incestuous marriages, care must be taken to confine the doctrine to such cases, as by the general consent of Christendom, are deemed incestuous." And further on he says, "the canon and common law seem to have made no distinction on this point between consanguinity, or relation by blood, and affinity, though there is certainly a very material difference between the cases." Our ecclesiastical courts have in their proceedings given the common technical name of incest to all marriages within the prohibited degrees of affinity. It is clear it is not in this sense the rule is to be applied. It is also clear that this rule is not personal or local, but general, and applicable to all the marriages of Christendom. If adopted, it might possibly be held to apply to the marriage of uncle and niece. We have subjoined a note of a case, in which a connection of this sort came before our courts; also a reference to a case before Ld. C. J. Vaughan,

very curious, as shewing the ideas of the lawyers of his day, (1689) on these subjects.<sup>c</sup> We will now proceed to the second exception to the general rule of *lex loci contractus* prevailing.

The 2nd exception is a personal one, founded on the doctrine in *Lolly's case*. It arises from a rule or supposed rule, that an English marriage is divorceable only by act of parliament; and that all decisions of foreign courts are nullities with respect to it. From this rule, if established, it follows, that an English subject married here may carry with him abroad a personal disqualification which will prevent him contracting any future marriage, even abroad. The consequences flowing from this doctrine are so alarming that our courts have thrown out hints that a *bond side* domicile abroad may make a difference.<sup>d</sup> Mr. Burge adopts this view, and says (v. i. p. 680) that "neither the law of the country where the decree is made, nor the law of the place of contract should prevail, but that of *actual domicile*." To this doctrine we see no objection, provided he leaves the law of the country where the decree is to be made to decide on the sufficiency of the domicile.

<sup>c</sup> The case we refer to is reported, we think, in Haggard, or in Addams. No marriage was alleged, only cohabitation. The parties were alleged to be uncle and niece, and the difficulty was in establishing the uncle to be the child of the common ancestor. The Court held slight evidence sufficient, though met by circumstances raising suspicion to the contrary. If we wish to keep up a strong moral feeling against these revolting connections, it is surely unwise to class them by the same name with the case put by C. J. Vaughan (p. 249), of a marriage with a wife's sister's daughter. This marriage, he says, was questioned for incest before the High Commissioners, and sentenced, and the husband entered into a bond to abstain from her company, but they were not divorced, and, therefore, after his death, she recovered dower. The case in Vaughan (p. 206 to 250) is, as we have said, very curious,—rather as being a reading on the law than a decision of a single point. It was a prohibition applied for to prevent a suit in the Ecclesiastical Court, questioning a marriage for incest with a brother's granddaughter. The prohibition was granted, the marriage being out of Levitical degrees. There is at this moment a suit going on for annulling a marriage celebrated between uncle and niece by blood.

<sup>d</sup> We should ask, as before—*Bond side*, by what law? The law of the foreign state may, and probably does, require domicile to entertain the suit. Is there to be a further domicile required to satisfy the dignity of our own law? and is this to be judged of by our own law, probably by the rules relating to distribution of personality? The intention to evade is of course to be set up as a difficulty in the case: Is the length of the domicile to be conclusive evidence as to the existence of this intention, or controvertible evidence merely?

<sup>a</sup> We have now before us a suit turning in part on the validity of a Cape Coast Castle marriage. It is told us by laymen, though it cannot be accurate, that a marriage there is held binding only so long as both parties remain on the colony, and if either goes away, that the other may marry again.

<sup>b</sup> 1 Burge, 189.

<sup>c</sup> De Jure, lib. 2, c. 5, s. 14.

Lolly's case is very well known; it is reported in Russ. & Ryan, 237. The history of it is stated by Lord Brougham in *McCarthy and De Cais*,<sup>k</sup> and in the judgment of the lords in *Warrender and Warrender*.<sup>l</sup> It is also alluded to in the speech named at the beginning of this article, and was considered an authority in *Conway and Beasley*, in the Ecclesiastical Court.<sup>m</sup> Lord Brougham himself was counsel in it for the prisoner.

Lolly married and remained domiciled in England: he then went to Scotland to procure, and did procure a divorce, returned to England, and married again. He appears to have acted in this under a clear advice and belief that a foreign divorce would avoid an English marriage. He was, however, convicted of bigamy, and in 1813 sentenced, Lord Brougham says, to the hulks, we believe, to New South Wales,—a sentence which well merits the reproach thrown on it by Lord Brougham in *McCarthy and De Cais*. The question was reserved by the judge at assizes, and argued before all the Judges, who were unanimously of opinion that no foreign court could dissolve an English marriage *a vinculo*, except for grounds on which a divorce *a vinculo* could be obtained in our courts. Here ends all we find recorded in our books of the poor man's miserable history. We are, however, enabled from private information, to carry it further, and wish the remnant of the story may meet Lord Brougham's eye, to incite him to further efforts to amend, or to render, at any rate certain, our wretched matrimonial laws. Lolly seems to have been devotedly attached to his second wife. During his transportation he contrived to accumulate a sum of money, considerable for a man in his circumstances. He returned, not very long since, to Liverpool, deposited his money in a banker's hands, and his first wife being, we believe, then dead, immediately sought out the object of his attachment, but found her married again. The hope which had supported him through years of toil and disgrace being destroyed, he immediately in his distress put an end to his own life.—But the story does not stop here. The second wife, when we heard the tale, was attempting to obtain his money by getting administration granted to her as his widow; and, what is stranger still, would be entitled, we apprehend, to succeed in her attempt, under the authority of the case of *Wilkinson and Gordon*,<sup>n</sup> where it was held that a record of conviction of a man for bigamy, was not an obstacle to decreeing administration to the second wife.—(To be continued.)

<sup>k</sup> 2 Russ. & Mylne, 620. Mr. Burge, 1 677, in a note (probably written and printed before the publication of this vol. of Messrs. Russell & Mylne's reports, but published in 1838) complains that "not a trace of this or of other international questions arising before the equity courts, is to be found in those 'bulk volumes containing the reports of decisions there.'"

<sup>l</sup> 2 Shaw & McL. 182; and 9 Bligh. 89; and Appendix to 1 Vol. Burge Consol. Laws.

<sup>m</sup> 3 Hag. 648.

## RE-ADMISSIONS.

*Last day of Hilary Term, 1840.*

### QUEEN'S BENCH.

- Bickley, George, 7, Albany Court Yard, Piccadilly.
- Dignam, Thomas, 80, Upper Stamford Street.
- Eade, William, Stovington, Sussex.
- Elmslie, John Foster, 6, Endsleigh Street, Tavistock Square; Hollycot, near Lasswade, Mid Lothian, and Watlington Park, Oxford.
- Forrester, Gilbert Davis, 6, Hawley Terrace, Camden Town; Brentford Butts, Greenhythe; 37, Robert Street; 12, St. James's Place, Hampstead Road; and 52, Lincoln's Inn Fields.
- Freame, Henry George, Thatcham, Berks.
- Fothergill, Francis Frankland, 18, Cambridge Street, Edgeware Road.
- Groom, John, Audlem, Cheshire.
- Gilbert, Samuel Richardson, Matlock, Bath, Derby.
- Jennings, Thomas Francis, 8, Kensington Terrace, Kensington.
- King, Edward, Sudbury; 20, North Street, Westminster.
- Lorymer, William Tindal, of 7, Crescent Place, Hampstead Road.
- Lucas, Thomas Francis, 38, Lucas Street, Commercial Road; 157, High Street, Shadwell; Hollywell, Long Buckley, Olney, Tring, and Hoxton.
- Lander, John Gilbert, 33, St. John's Wood Terrace, Regent's Park; and Owles, near Buntingford.
- M'Beath, William John, 50 a, Lincoln's Inn Fields.
- Mould, Joseph, Great Charlotte Street, and Wellington Terrace, Surrey.
- Miller, James, 223, Piccadilly.
- Maye, Philip, 15, Elizabeth Street, Eaton Square; Totnes and Gravesend.
- Priestly, Charles, 7, Downham's Lodgings, Harrogate, and Bradford.
- Reed, Archibald Joseph, Newcastle-upon-Tyne.
- Smith, James, of Ripon.
- Swann, Thomas George, 3, Park Row, Greenwich.
- Thompson, Richard, 3, Racquet Court, Fleet Street.
- Vickery, James, Cumberland Terrace, Lloyd Square, Pentonville.
- Monkhouse, Hutton, 90, Upper Stamford Street, Blackfriars Road.

### COMMON PLEAS.

- Jones, Edmund Warden, formerly of Tewkesbury, in the county of Gloucester; afterwards of Boulogne, *sur mer*, in the kingdom of France, but now of the township of Charlton-upon-Medlock, in the parish of Manchester, in the county of Lancaster.
- Powell, John, of No. 4, Windsor Terrace, Great Dover Road, in the county of Surrey; No. 12, Hermitage Place, St. John's Street Road, in the county of Middlesex, and at No. 3, Windsor Terrace, Great Dover Road, aforesaid.

**ATTORNEYS APPLYING TO BE ADMITTED**  
*In Easter Term, 1840.*

**QUEEN'S BENCH.**

<i>Clerk's Name and Residence.</i>	<i>To whom articled, assigned, &amp;c.</i>
Astley, Henry Edward, 6, King Square, Middlesex.	Thomas Macauley Crutwell, Bath.
Adamson, William, 35, Marchmont Street; and Newcastle-upon-Tyne.	John Adamson, Newcastle-upon-Tyne; assigned to John Trotter Brockett, Newcastle-upon-Tyne.
Angell, Thomas John, 25, Grove End Road, St. John's Wood.	John Phillips Beavan, 3, Sackville Street, Piccadilly.
Abbott, Charles James, 36, Gower Street.	Charles Thelwall Abbott, New Inn.
* Bailey, Elijah Crozier, Norwich; 16, King Street, Covent Garden; and 6, New Street, Brompton.	James Winter, Norwich; and with Thomas Martin, 1, Trinity Place, Charing Cross.
Barwick, John Marshall, Leeds.	Matthew Bloome, Leeds.
Browne, Robert, 13, Barnard's Inn; Cheadle; and Bradley.	Abraham Flint, Uttoxeter; assigned to John Michael Blagg, Cheadle.
Bloxham, John Richard, 45, York Road, Lambeth; Handsworth; and 409, Strand.	John Stubbs Birmingham.
Baines, John George Fuller, 6, Featherstone Buildings; and Needham Market.	Frederick Hayward, Needham.
Bush, John Alderton, 17, Great Ormond St.; and Bradford.	John Bush, Bradford.
Bateson, William Gandy, 20, Everett Street, Russell Square; and Liverpool.	Thomas Carson, Liverpool.
Boodle, James, Cheltenham.	William Huberte Gyde, Cheltenham.
Ball, Edwin, 43, Gower Place; Worcester; and Bedford Street, Bedford Square.	Robert Gillam, Worcester.
Brodrick, George, 35, Great Ormond Street.	William Broderick, Bow Church Yard.
Bennett, William Wolley Leigh, 20, Judd Place; and Gawcot.	Thomas Hearn, Buckingham.
Brookes, Edward, Chapel House, Ridgway Gates, Bolton-le-Moors; St. Thomas's St., East; Wharton Street; and Chichester Place.	James Cross, Bolton-le-Moors; assigned to William Gilbertson, 12, Cook's Court, Lincoln's Inn.
Berry, Edward, 12, Harwood Street, Camden Town; Sidmouth Street; Hampstead; and Leicester.	Stone, Samuel, Leicester.
Browne, Charles, Nun Green, Peckham Rye.	Henry Philippa, 4, Sise Lane, London.
Baker, Richard Dodd, Highfields, Audlem; and Brooklands, Chester.	John Cooper Beckett, Brooklands.
Baldock, Henry, 3, Millman Street; and Salisbury Street.	Edward Twopenny and Geo. Essell, Rochester.
Bristow, Alfred Rhodes, Greenwich.	Robert Christopher Parker, Greenwich.
Barrett, George, 12, Seymour Place, North; East Street; and Tottenham Court Road.	James William Barrett, Gray's Inn.
Braithwaite, Francis, the younger, 5, Newton Terrace, Kennington; Liverpool Street; and Manchester Street.	George Rawson, Nottingham; assigned to James Parke, Lincoln's Inn Fields.
Chandler, Arthur, 27, Francis Street, Tottenham Court Road; and Arundel.	William Henry Calhoun, Arundel; assigned to George Balchin, Arundel.
Cartbew, Edward, 6, Southampton Buildings; and Plymouth.	Henry Woolcombe, Plymouth.

\* The names marked thus \* are in the Common Pleas.

*To be continued.*

**HILARY TERM EXAMINATION.**

The Examiners have appointed next Thursday, the 23d instant, to take the Examination of Candidates applying to be admitted on the

Roll of Attorneys. The candidates must attend at half-past Nine in the morning. Their testimonials of due service must be left on the 18th. We wish them "a good deliverance."

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## PRACTICE.—APPEAL.—ENROLMENT.—COSTS.

Where there is no *caveat* entered against enrolling a decree, a petition of appeal presented against it and answered by the Lord Chancellor and set down for hearing, deposit being paid, will not stop the enrolment, unless the party enrolling it has led the appellant to believe he would not enrol it. But service of the order for hearing the appeal stops the enrolment.

This was a motion to make an enrolment of an order pronounced by the Vice Chancellor on the 20th of July last, allowing a plea to the bill. The plaintiff presented a petition of appeal from that order on the 7th of August. It was answered by the Lord Chancellor on the same day, and on the 9th the deposit was paid and the appeal was set down for hearing, and the order for hearing was served on the defendant on the 17th of August. The order was enrolled by the defendant on the 15th of August. No *caveat* had been entered against the enrolment.

Mr. Richards and Mr. Russell, in support of the motion.—The defendant's solicitor knew that the plaintiff was about to appeal from the order, for his clerk heard plaintiff's counsel advising that an appeal be instantly brought, when the order was pronounced, and the clerks of the solicitors on both sides joined in an application to the master on the 9th of August, to postpone the taxation of costs. The object of postponement was to await the result of the appeal. The defendant's solicitor's clerk was aware on the 9th of August that the petition of appeal had been presented and answered. There was an affidavit of these facts.

[*The Lord Chancellor*.—Suppose the defendant had notice of the appeal, is there any evidence to shew that he submitted, or did anything to mislead the plaintiff, or take him by surprise; why was not a *caveat* entered against the enrolment?] The object of a *caveat* is to give time for considering whether it will be advisable to appeal. The *caveat* grants twenty-eight clear days for consideration, but a *caveat* is not necessary when an appeal is actually brought; the petition of appeal being presented and answered, the enrolment is effectually stopped. Would it be consistent to ask the Lord Chancellor to sign the docquet, to enrol the order, after he had answered the petition of appeal? Would not that be to practise a deception on the Great Seal?

[*The Lord Chancellor*.—If the presenting a petition of appeal, and getting it answered by the Lord Chancellor, were sufficient to stop the enrolment, then an appellant would have no more to do than get his petition of appeal answered, and put it in his pocket and walk away, without ever bringing it to a hearing.] When such a case arises, this Court will find a remedy for the abuse. Here not only was the petition of appeal presented and answered, which would be quite sufficient accord-

ing to the cases to prevent the enrolment, but the deposit was paid, and the appeal set down for hearing. They cited *Robinson v. Newdick*,<sup>a</sup> *Stevens v. Gappy*,<sup>b</sup> and *Richards v. Wood*,<sup>c</sup> and, after reading contradictory affidavits by the clerks of the respective solicitors, they submitted that the enrolment ought to be vacated with costs.

Mr. Brshell, for the defence. [*The Lord Chancellor*.—You need not trouble yourself with the affidavits, as they do not make out any case of acquiescence or deception.] Certainly they do not. As to the cases cited, there was a *caveat* entered in *Richards v. Wood*, and it was on the ground that there was no *laches* on the part of the appellant that Lord Lyndhurst discharged the enrolment in that case. The case of *Robinson v. Newdick* was not at all applicab'e; but there also a *caveat* had been entered. The *caveat* made the whole difference: it gives a party twenty-eight clear days from the signing of the docquet, before the decree can be enrolled. But where there is no *caveat*, there are three preliminary proceedings to be had before enrolment is stopped. There must be a petition of appeal presented and answered; then the deposit must be paid, and the order for hearing the appeal entered with the registrar and served on the other party, who is by that service of notice, prevented from enrolling his decree; the service of the order for hearing alone stops the enrolment. The other preliminary proceedings are between the appellant and the Lord Chancellor's Officers, not necessarily known to the other party, and therefore not binding on him. An appellant may put his answered petition in his pocket for months. An appeal is not lodged, until the order for hearing is served on the other party. In none of the other cases was it held sufficient, in order to stop enrolment, to present a petition of appeal. The party who has the decree is not bound to take notice of the appeal, until the order for hearing is duly served, nor to disclose his intention to enrol his decree, if he does not practise deception. *Barnes v. Wilson*,<sup>d</sup> *Balguy v. Chorley*,<sup>e</sup> *Wardle v. Carter*.<sup>f</sup>

Mr. Russell, in reply.—The order for hearing the appeal operated from the day the petition of appeal was answered; orders take effect from the time they are made, and not from the time of service of them on the opposite party. *Lorimer v. Lorimer*.<sup>g</sup> The plaintiff's proceedings were regular orders in the cause between him and the Court; whereas the defendant's proceedings were merely formal.

*The Lord Chancellor* could not well reconcile the cases. It was impossible to say on which of three grounds the decision in *Robinson v. Newdick* proceeded.

His Lordship, next day, said he had looked into the cases. He had yesterday given his opinion that what was disclosed by the affida-

<sup>a</sup> 3 Meriv. 13.<sup>b</sup> Turner & R. 178.<sup>c</sup> 2 Myl. & C. 621. <sup>d</sup> 1 Russ. & M. 486.<sup>e</sup> 1 Myl. & K. 640. <sup>f</sup> 1 Myl. & C. 283.<sup>g</sup> 1 Jac. & Walk. 284.

suits as having taken place between the solicitors and their clerks, did not affect the question one way or the other. The admitted facts were these—the enrolment took place on the 15th of August; a petition of appeal was presented and answered on the 7th, and the deposit was paid and the appeal entered on the 9th and 10th of August, but the order of hearing the appeal was not served on the defendant until the 17th of August. So that the enrolment was effected between the time when the appeal was set down, and the time when the notice was served. The conversations deposited to in the affidavits not affecting the question at all, he left them out of his consideration, and proceeded to decide the question on the strict practice. The defendant necessarily knew nothing of the appeal until he was served with the notice of hearing it. The petition of appeal is merely for liberty to appeal, which is granted conditionally, the Court assenting on certain terms. It is in the option of the party afterwards whether he will or will not comply with the terms. It is only by the service of the order that the other party is brought into Court. All that is previously done by the appellant is done behind the back of the other party, who in the mean time proceeds regularly to enrol his decree. In *Stevens v. Guppy*, the enrolment was vacated on the ground that conversations passed between the solicitors amounting to an agreement that the decree would not be enrolled. His Lordship, after referring to *Robinson v. Newdick* and to *Richards v. Wood*, said the circumstances in them were materially different from this case, in which he was to decide whether the enrolment was to stand or be set aside for irregularity; and he was of opinion that it ought to stand.

On Mr. Bethell's application, his Lordship ordered the plaintiff to pay the costs of the affidavits.

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**Mr. Richards** on the first day of Term (Hilary 1840,) after calling to the Lord Chancellor's recollection the points of this case, said his Lordship had refused the motion without costs, except the costs of the affidavits. Conceiving that his client, the appellant, ought not to be called on to pay the costs of the respondent's affidavits; his application to the Court now was, that the costs be confined to the affidavits filed by the appellant.

**Mr. Bethell** appeared for the respondent to oppose the application.

**The Lord Chancellor.**—The affidavits filed by the respondent, were caused by those filed by the party moving, and were an answer to them.

**Mr. Richards.**—The respondent filed the first affidavit charging irregularity.

**The Lord Chancellor.**—Except that one, let the appellant pay the costs of all the affidavits.

**Dearman v. Wyche.**—At Westminster, Nov. 25; Lincoln's Inn, Nov. 26, 1839; and at Westminster, January 11, 1840.

### Queen's Bench.

[Before the Four Judges.]

#### MASTER AND APPRENTICE.—PLEADING.

*An apprentice was injured by the act of A.'s servant. The master thereby not only altogether lost the services of his apprentice for a time, but the apprentice also when able to return to work, became unfit to do the finer sorts of work in his master's business. Before the apprentice had quite recovered, the master brought his action against A. for the loss of the apprentice's services. Evidence was admitted to shew how long the apprentice was likely to continue affected by the injury, and the judge left that as a matter for the consideration of the jury in estimating the damages: Held, that he was right in so doing.*

This was an action brought by the plaintiff who was a watchmaker, to recover compensation in damages for the loss of the services of his apprentice, a lad named Young. At the trial of the cause before Lord Denman, C. J., at the sittings after last term at Guildhall, it appeared that the lad was going along Goswell Street, when he was accosted by the servant of the defendant, who had got his truck into a rut in the road, and was asked by him to lend a helping hand to get it out. With this request the lad at once complied. While endeavouring to push forward the truck, a large fierce dog, which was fastened under it, and which the plaintiff's apprentice had not before seen, seized hold of his hand. The boy tried at the moment to draw it back, and in making the attempt, the two fore fingers were dreadfully lacerated, and the nail of one of the fingers was torn off. The lad was taken to a doctor's and thence to a hospital, where he was carefully attended to. The wounds took a long time to heal, and during that time, the plaintiff was not only deprived of the services of his apprentice, but was obliged to have a person to do his work, and even up to the time of the trial, the flesh was still so tender that the apprentice could not, as before, turn the pivots and the virges of the watches, or do any of the finer kinds of work which he had before been accustomed to do, but was employed only in polishing and going errands. As the master was by the terms of the indenture, bound to maintain the boy, he sought compensation for the injury which the loss of the boy's services had entailed on him. The defendant had paid 10*l.*, and pleaded that that was a sufficient compensation for the loss the plaintiff had sustained. The plaintiff took issue on that plea. Evidence of the state of the boy up to the time of the trial, and of the probable continuance of his inefficiency as a superior workman was tendered, and after objection, admitted; and the learned judge told the jury that they might consider not only the actual loss suffered up to the time of the action, but the probable inefficiency of the lad as a workman, and give damages for the injury thus sustained by the master. The jury returned

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a verdict for 20*l.* above the money paid into court.

Mr. Erle now moved for a rule to shew cause why the verdict should not be set aside and a new trial granted. It is clear that there has been a misdirection in this case. The question for the jury was, whether the plaintiff had sustained greater damage than the 10*l.* which had been paid into court. The learned judge permitted evidence to be adduced to shew how long the boy was likely to be unfit to perform the better sort of work in his master's business, and told the jury that they might take into their consideration the damage which the master was likely to sustain from that circumstance. This was an erroneous direction. [Lord Denman, C. J.—Does not the master sustain damage by having a less useful apprentice than he had before?] That was the damage which he sustained when the action was brought, but the 10*l.* paid into court, covered that damage. The other was continuing damage, and an action for continuing damage cannot be maintained; *Hamilton v. Weere*.<sup>a</sup> There the plaintiff declared for procuring his apprentices to depart from his service, and for the loss of his service for the whole residue of the term of his apprenticeship, and the jury assessed damages generally, and the Court for that cause arrested the judgment. The principle there adopted is clearly correct, for after damages given for the loss of the future services of the apprentice, he may, from some unexpected accident, die on the day following. Besides in that case, the plaintiff claimed damages for the loss of the future services; but here the declaration only alleges damage from the time of the injury to the commencement of the suit, so that on the form of the declaration itself, these continuing damages cannot be recovered. The master, if he suffers a fresh loss, must bring a fresh action. This rule was also adopted in *Horn v. Chandler*,<sup>b</sup> where the action was against the apprentice himself. *Malachi v. Soper*,<sup>c</sup> is an illustration of the same rule, for though it is not reported on this point, the learned Judge at the trial, did in fact tell the jury that they could not give damages in respect of the libel there complained of, for any injury supposed to accrue after the time of action commenced. In cases of contract, the breach of the contract is the cause of action, as the injury was the cause of action here. The damages that accrued subsequent to the issue of the writ, cannot be considered as the cause of action, nor be calculated by the jury in the verdict.

Mr. Justice Littledale.—I do not think that there is any ground for this application. I think that the master in this action may shew a loss subsequent to the time of the injury. Is this a case in which we must consider the injury itself as the sole cause of action? I think

not. It is said that the master must bring his action from time to time, as the loss accrues; but I do not agree to that proposition. The cause of action in a proceeding of this sort by the master, is not the wrongful act alone, but the wrongful act and the consequent damage put together. The apprentice might have brought the action for the unlawful act alone, for he would suffer personal pain; but the master must, if he brings an action, shew special damage, for it is actual damage, of which he can alone complain. He has shewn it here, and I think the matter was properly left to the jury.

Mr. Justice Coleridge.<sup>d</sup>—I am entirely of the same opinion. It must be conceded that if any injury had been done to the person of the plaintiff, the jury might have taken into consideration the damage that would have been sustained therefrom, whether permanent or not. But here the action is not by the person directly injured, but by the master, who complains of the damage resulting from the unlawful act of the defendant. The wrongful act alone was not an injury to the master; but when the resulting damage arose, he had a right to bring an action in respect of both. The jury, therefore, were authorized to take into consideration the injury which the master suffered from having his apprentice made less permanently useful than before.

Lord Denman concurred.

Rule refused.—*Hodgson v. Stallebrass*, jus., H. T. 1840. Q. B. F. J.

#### Common Pleas.

##### EMPLOYMENT OF ATTORNEY.—DELIVERY OF BILL OF COSTS.

A., an attorney, was employed by B. and C. to prepare certain documents, to secure a loan upon an annuity. A warrant of attorney was afterwards executed by C. and D., at which E., another attorney, was employed for C. and D. It was part of the agreement that C. should pay all the costs of the transaction: Held, that A. was the attorney of C., and that the latter was entitled to the delivery of a bill of costs.

This was a rule calling upon the defendant Thomas Linsell, to shew cause why an order made by Erskine, J., at chambers, directing Duncan, an attorney of this Court, to deliver a bill of costs to him, as well as a rule, by which that order was made a rule of Court, should not be discharged. It appeared from the affidavits, that in the month of September, 1839, Mr. Duncan was employed to prepare certain documents for the security of money raised by way of loan from the plaintiff to the defendant, upon an annuity. An agreement was first prepared and submitted by Mr. Duncan for the defendant's inspection; and subsequently a deed, founded upon that agreement, was drawn up and executed in the presence of Mr. Duncan, the agreement containing a

<sup>a</sup> 2 Wms. Saund. 169 b.

<sup>b</sup> 1 Mod. 271.

<sup>c</sup> Ante, L. O. Vol. 13, p. 124; 2 Hodg. 217; 3 Bing. N. C.

<sup>d</sup> Mr. Justice Williams was absent on the trials for high treason at Monmouth.

clause that the defendant should pay all the expenses attending the transaction. It afterwards became necessary to execute a warrant of attorney for the security of the plaintiff, and to which William Linsell, the other defendant, became a party. Mr. Wilkinson, an attorney, then attended on behalf of the Linsells, and witnessed the execution of the warrant of attorney. Subsequently, Mr. Duncan demanded that the defendant Thomas Linsell should pay him the amount of his bill, and threatened if it were not paid, he would sue out a writ against him. The defendant thereupon applied to Mr. Justice *Erskine* at Chambers, for an order that Duncan should deliver his bill of costs, and an order having been granted, it was made a rule of this Court. Mr. Duncan himself made an affidavit in support of this rule, in which he swore that he had never been the attorney for the defendant Thomas Linsell, "except so far as he might be considered to have acted as such in respect of this transaction."

*Chandless* now shewed cause against this rule, and contended that under the provisions of the statute 2 Geo. 3, c. 23, the person, who was liable to pay the costs, was entitled to have the bill delivered to him; *Webb v. Rhodes*, 3 Bing. N. C. 732. It was here agreed that Thomas Linsell should pay the costs, and although there was no distinct employment of Mr. Duncan by him, he must be held to be entitled to the delivery of a bill. There was nothing contained in the affidavit of Mr. Duncan, which sufficiently denied the employment by the defendant, and even although the defendant should not be immediately liable to the attorney, he was at all events liable over through the plaintiff; and no distinction could be said to exist between the two liabilities.

*White*, in support of the rule, urged that the order had been made under an error; that Mr. Duncan was in fact, the attorney of the defendant. He swore that he never was his attorney, except as regarded the preparation of these documents, but the drawing an agreement was not an item which was taxable. Mr. Duncan was in truth the attorney of Painter, for whom he had before acted, and he had now been paid by him. The suggestion that "he would sue out a writ," alluded to in the affidavits, could not be supposed to apply to his commencing an action in his own name, but in that of the plaintiff, to whom, no doubt, the defendant was liable.

*Maule*, J.—The suggestion of the payment of the costs by Painter, cannot have been made at chambers; otherwise it would have been mentioned as a ground of objection. If so, it can hardly be now said, that the suit was to be in the name of the plaintiff.

*White*.—The rights of a party to have the bill delivered and to have it taxed, were correlative, *Doe dem. Palmer v. Roe*, 4 D. P. C. 95; but if the items were not taxable, as here, the party was not entitled to have a bill delivered.

*Bosanquet*, J.—I am of opinion that this

rule must be discharged. It seeks to set aside an order of *Erskine*, J., directing Mr. Duncan to deliver a bill of costs upon the application of the defendant, Thomas Linsell. The question is, whether that defendant stands in the situation of being liable, either separately or jointly, to Mr. Duncan, for the costs and expenses occasioned by preparing the securities for the amount lent by the plaintiff to the defendant. The transaction commences thus; Painter is the lender of the money, Linsell is the borrower, and Duncan is the attorney employed to prepare the security, and no one else is at first engaged. An agreement is drawn up by him, and it directs, as between Painter and Linsell, which is to bear the expenses, and it appears that Painter is not to bear any part of them. Then, by whom is Duncan employed? He is employed to conduct the transaction, in which both are interested, and the agreement does not specify by whom. He was present at the time of the execution of the deed; he prepared the agreement; and he had notice that Linsell was the person who was ultimately to pay. I do not say that that is conclusive that Linsell was his client, but it appears, as far as we can judge, that he was employed by two persons, in reference to a matter by which they were mutually to be benefitted. He is the witness to the deed, and he only. Then, in carrying it into execution, it appears that another person, William Linsell, is to become security, and a warrant of attorney is executed in the presence of Mr. Wilkinson, another attorney. Now the subject-matter of this motion is the costs and expenses of preparing this security, and no doubt part of the security was the warrant of attorney, in respect of which, therefore, the bill would be taxable, provided Linsell be entitled to call for its delivery. Then the matter remaining in doubt is, who is to pay Mr. Duncan for what he has done? We must look to the conduct of Mr. Duncan himself on this point, and I think that it is conclusive. Upon his being called upon to deliver a bill of costs to Linsell, he says, "I will give him none; he has had one already, and if it is not paid, I shall issue a writ." On another day he repeats this threat, and then he says, "Why does he not make a tender?" These circumstances, therefore, in the conduct of Mr. Duncan himself, shew that he considered that Linsell was liable to pay him the money, and the latter is entitled to the delivery of a bill.

*Erskine*, J.—It does not follow that because Wilkinson was employed by Linsell for one purpose, that he was therefore his attorney for all purposes; it was necessary that another attorney should be called upon to act, at the execution of the warrant of attorney, for Duncan could not be the attorney for both plaintiff and defendant. The conduct of Mr. Duncan shews that he believed that the defendant was liable to pay him, and I think that this rule must be discharged.

*Maule*, J., concurred.

Rule discharged.—*Painter v. Thomas and William Linsell*, H. T. 1840. C. P.

## Queen's Bench Practice Court.

**WARRANT OF ATTORNEY.—GUARANTEE.—JUDGMENT.—AMOUNT OF DEBT.**

*The Court will allow judgment to be entered up generally, on an old warrant of attorney, without mentioning the amount of the debt, where, from peculiar circumstances, the amount cannot be stated.*

In this case the plaintiff had become guarantee for the defendant, and the latter had given him a warrant of attorney, empowering him to sign judgment for all such sums as the plaintiff should be bound to pay as his guarantee. It had not yet been ascertained whether any, or if any, what amount of money the plaintiff would be called upon to pay.

*Knowles* now applied for leave to enter up judgment on this warrant of attorney, which was more than a year old, without his affidavit stating the amount for which judgment was to be signed. It was proposed to enter up judgment generally, in the same terms as those of the warrant of attorney. It was sworn that the warrant was still in full force and effect, and that the dealings between the defendants and the person to whom the guarantee was given had ceased altogether. No doubt, in general it was required that an affidavit should be produced of the money being still due and owing. In the present case, however, under its peculiar circumstances, such an affidavit could not be made.

*Patteson*, J.—You may take a rule.

Rule granted.—*Pickering v. Carvell*, H. T. 1840. Q. B. P. C.

**APPAL AGAINST ORDER OF JUSTICES.—TIME OF ENTERING INTO RECOGNIZANCE.**

*The Birmingham and Gloucester Railway Act* requires that recognizances shall be entered into "forthwith" after notice of appeal. Held, that the meaning of the act is, that sureties shall be given within a reasonable time; and that nine days is too long, without some reason being assigned for the delay.

A rule had been obtained by *Whateley*, calling on the justices of Worcestershire to shew cause why a mandamus should not issue, commanding them to hear and determine an appeal against an order made by certain justices of that county, under sect. 50 of the act by which the completion of a railway from Birmingham to Gloucester was authorized. (6 W. 4). By sect. 50 of that statute, two justices were empowered to make an order for the erection of gates, bridges, or other communications from the railway to the adjoining land, in case the same should not have been forthwith done after the formation of the railway. The order in question had been made under the provisions of this section. Sect. 219 enacted, "that any person considering himself aggrieved by such an order, might appeal against the same within four calendar months alter it should have been made, to the justices

at any general or quarter sessions held for the county in which the alleged cause of appeal should have arisen, first giving ten day's notice in writing of the grounds and nature of the appeal to the opposite party, and forthwith after such notice entering into recognizances before some justice, with two sufficient sureties conditioned to try such appeal, and to abide the order and award of the Court." In this case the order was made on the 26th January, and on the 27th March notice of appeal was served. On the 4th April, nine days therefore after the notice of appeal, and only four days before the session, the necessary sureties were given. It was objected when the appeal came on to be heard that the recognizances had not been entered into *forthwith*, within the meaning of the act; and the Court of Quarter Sessions, adopting this suggestion, dismissed the appeal.

*W. Alexander* now shewed cause, and contended that the Court of Quarter Sessions had rightly decided the question before them. The word *forthwith* must be taken to mean immediate. The case of *Rex v. The Justices of Huntingdonshire*,<sup>a</sup> was therefore in point, where a party having been convicted under the Malicious Trespass Act, an immediate notice of appeal after conviction being required, it was held that a notice given after the lapse of seven days was too late.

*Whateley*, *contr*., submitted that the word *forthwith* must be taken to mean that the notice should be given within a reasonable time. The 50th and 219th sections, if construed together, would shew that the recognizances had been entered into in proper time; and that the appeal therefore should have been heard.

*Coleridge*, J.—This rule must be discharged upon the view suggested by Mr. *Whateley*. The word *forthwith*, I agree, is not to receive a strict construction, like the word "immediately;" but, referring to the 50th section, I think that what is to be done under its provisions must be done without any unreasonable delay. The word *forthwith*, as it is there used, must be considered to have that meaning. As it has that meaning in the manner in which it is there used, it must have a similar interpretation with the 219th clause? The difficulty which I have in deciding with Mr. *Whateley* is, that there are no facts stated which would shew that nine days was a reasonable time to be allowed to elapse between the notice of appeal and the entering into the recognizance. If I am to say that the justices have not done right, I must lay it down as a general rule that entering into the recognizance nine days after notice of appeal is a sufficient compliance with the act. I cannot go that length, however, and this rule must be discharged, but not with costs.

Rule accordingly.—*The Queen v. The Justices of Worcestershire*, M. T. 1839. Q. B. P. C.

## Lord Chancellor.—Vice Chancellor.

## JUDGMENTS.

Attorney Gen. v. Pearson, *appeal*  
 Attorney Gen. v. Wilson, *ditto*  
 Bensborough v. Barnes, *ditto*  
 Tullett v. Armstrong, *ditto*  
 Munch v. Cockerell, 2 *appeals*  
 Attwood v. Small, 2 *appeals*  
 Ward v. Painter, *appeal*  
 Hawksworth v. Bramwell, *ditto*  
 Easum v. Appleford, *ditto*  
 Swain v. Pratt, *excs. & fur. dirs.*  
 Maund v. Allies—Ditto v. Cooke  
     —*causes*  
 Att. Gen. v. El. of Stamford, *cause*  
 Musgrave v. Newton, *cause*  
 Gompetz v. Ansdell, *cause*  
 Ryan v. Hill, *cause*, V. C.

## PLEAS AND DEMURRERS.

Foley v. Hill, *plea*, S. O.  
 Waterman v. Smith, *demurrer*  
 Moore v. Dearden, 2 *pkas*  
 Pudwick v. Nicholl, *plea*

## RE-HEARINGS AND APPEALS.

Sherwood v. Storer, *appl.*, abated  
 Tucker v. Stone, *ditto*, abated  
 Blanchard v. Cawthorne, *do.* ditto  
 Ashton v. Milne, *ditto*, abated  
 Gambia v. Gambier, *do.*, abated  
 Barrard v. Howard, *ditto*, S. O.  
 Att. Gen. v. Brentwood, *do.*, S. O.  
 Alderwick v. Holland, *do.*, S. O.  
 Dixon v. Dixon, *ditto*, S. O.  
 Attorney Gen. v. Boston—Ditto  
     v. Ditto, *appeal*  
 Attorney Gen. v. Borill, *ditto*  
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 Pym v. Lockyer, *ditto*, S. O.  
 Fradgley v. Campbell, *ditto*  
 Ditto v. Hooker, *fur. dirs.*  
 Ward v. Tawney, *appeal*

Saturday, 11th January.

## MOTIONS.

Monday, 13th January.

CAUSES, FURTHER DIRECTIONS  
AND EXCEPTIONS.

*Abated in 1829.*

Newham v. Timbrell  
 Villers v. Flint  
 Pelham v. Towne  
 Knott v. Chamberlain  
 Price v. Smith

*Abated 1830.*

Scaife v. Scaife  
 Orred v. Shuttleworth  
 Leonard v. Chambers

*Abated 1831.*

Garrett v. Cockerell  
 Dovehill v. Barrettt  
 Codringon v. Lyne  
 Delfosse v. Butler  
 Baillif, &c. of East Retford v.  
     Cottam

Penrudduck v. Watts  
*Abated 1832.*

Morrison v. Roberts  
 Dixon v. Robinson  
 Brown v. Gaubert  
 Stone v. Stewart

Woodman v. Bostock  
 Bolton v. Barnes

*Abated.*

Baring v. Theobald  
 Kynaston v. Capper  
 Edwards v. Rutherford  
 Roberts v. Lee  
 Pimer v. Miffen  
 Clarke v. Clarke  
 Adams v. Brine  
 Best v. Bayley  
 Ponget v. Chambers  
 Janaway v. Williams  
 Ballard v. Triggs  
 Morris v. Wilson, *fur. dirs. & costs*  
 Hamilton v. Williams  
 Yarnold v. Yarnold, *exceptions,  
     further directions and costs.*  
 Underwood v. Cole  
 Bosanquet v. Barnard, *fur. dirs.*  
 Weeks v. Baron

Hancock v. Teague, *excs. S. O.*  
 Nocells v. Lingham, *ditto*, S. O.  
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 Lacon v. Waterton, abated  
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 Folland v. Lamotte, abated  
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 Arnold v. Hardwicke, S. O.  
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 Reece v. Taylor, *excs. 2 sets*, S. O.  
 Smith v. Twining, 3 *causes*  
 Bryam v. Beale, 3 *causes*, S. O.  
 Sharman v. Heath, abated  
 Flight v. Lake, *excs.* abated  
 Wilson v. Beddard—Ditto v. Wil-  
     liam, S. O.  
 Cochrane v. Curlewis, abated  
 Weatherall v. Brown, *fur. dirs.*  
     & *costs*, S. O.

Fermor v. Breeds, S. O.  
 Stiff v. Simmonds, abated  
 Trought v. Trought, S. O.  
 Griffith v. Browne, abated  
 Edwards v. Lloyd, S. O.  
 Sewell v. Murray, abated  
 Manistre v. Vines, abated  
 Hussey v. Bickerton, S. O.  
 Richards v. Commins, abated  
 Heaton v. Blair, *exceptions*, S. O.  
 Phillips v. Edwards, abated  
 Clough v. Bond  
 Attorney Gen. v. Laslett, abated  
 Powell v. Bettiss, abated  
 Woodforde v. Woodforde, 2 *causes,*  
     abate  
 Kidd v. North, abated  
 Morris v. Colclough, *ess. & fr. dirs.*  
 Woolwich Ferry Co. v. Clarke,  
     *further directions*  
 Banks v. Le Despencer, *fur. dirs.*  
 Ditto v. Stapleton, *by order*  
 Odgers v. Teague, *exceptions*  
 Muggeridge v. Muggeridge, *fur-*  
     *ther directions and costs*  
 Bowers v. Sherman, *fur. dirs. &*  
     *costs*, abated  
 Bonfil v. Purchas, *fur. dirs. & costs*  
 Cooper v. Emery, *exceptions*  
 Felton v. Turner, *fur. dirs. & costs*  
 Rawlings v. Solomons, abated

Hill v. Stephenson, abated  
 Wise v. Howard  
 Gordon v. Robley, abated  
 Snelling v. Humphreys, *fur. dirs.*  
     & *cause by order*  
 Fox v. Beecham, abated  
 Gooch v. Wilson, abated  
 Barton v. Jayne, *at deft.'s request,*  
     abated  
 Shale v. Hodson, abated  
 Poore v. Wolff, S. O. L. C.  
 Swaine v. Pratt, *fur. dirs.* S.O.L.C.  
 Hurrell v. Tarn, abated  
 Haylar v. Field, abated  
 Barton v. Jayne, abated  
 Sharwood v. Mayne, S. O.  
 Jackson v. Pickering, abated  
 Neate v. Pink, S. O.  
 Davison v. Cutler, *fur. dirs.* S. O.  
     L. C.  
 Orton v. Richdale, abated  
 Griffiths v. Aldersey, *fur. dirs. &*  
     *costs*, abated  
 Burrough v. Philcox, *do.* S.O.L.C.  
 Lacy v. Ditto, *cause*, S. O. L. C.  
 El. of Falmouth v. Alderson, S. O.  
     L. C.  
 Temple v. Duke of Buckingham,  
     abated L. C.  
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     *fendants*, L. C.  
 Chambers v. Green, abated  
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     *of defendants*, abated L. C.  
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 English v. Mann, ditto  
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Grover v. Holroyd, ditto		Hickman v. Gibbons	Trelawney v. Roberts, <i>exceptions and ditto</i>
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 Davis v. Grey  
 Parnell v. Hand  
 Lake v. Russell  
 Batt v. Anns  
 Taylor v. Thompson  
 Watson v. Labrey  
 Stephenson v. Bridger  
 Cockburn v. Sherman  
 Tulloch v. Hartley, at deft's req.  
 Benn v. Dixon  
 Stopford v. Lord Canterbury  
 Merrikin v. Bland  
 Naylor v. Lackington  
 Att. Gen. v. Haberdashers' Co.  
 Franklin v. Drake  
 Stammers v. Halliby  
 Miller v. Guardians of East-hampstead Union  
 Northwood v. Scrase, further directions and costs.  
 Leicester v. Leicester, exceptions  
 Peyton v. Hughes, fur. dirs. & co.  
 Berkeley v. Swinburne, further directions and costs  
 Smith v. Dawes, ditto  
 Scott v. Davis, ditto  
 London and Greenwich Railway Company v. Goodchild, exons.  
 Montgomery v. Calland, further directions and costs

Potts v. Pinnegar  
 Poole v. Allen  
 Buckell v. Hardley  
 Trulock v. Robey  
 Jolliffe v. Hector, (exceptions)—  
   Ditto v. Ditto, further directions  
 Attorney General v. Slaughter  
 George v. Flexman, further directions and costs  
 Harries v. Rainbott  
 Edwards v. Sturges  
 Melville v. Preston  
 Kebell v. Philpot, fur. dirs. & costs  
 Warner v. Gomme  
 Clayton v. Hargreave  
 Ridehalgh v. Burnley  
 Horne v. White  
 Countess Nelson v. Eyre  
 Bartlett v. Coleman  
 Livesey v. Livesey, 6 causes, further directions  
 Hopkinson v. Bagster, exceptions  
 Robinson v. Rosher  
 Leigh v. Locker, fur. dirs. & costs  
 Henslowe v. Lambert  
 Broadhurst v. Balguy  
 Bridge v. Yates, further directions and costs, abated  
 Ditto v. Ditto, ditto  
 Kirkwall v. Flight  
 Thornton v. Hinge, fur. dirs. & cs.  
 Dryden v. Welford  
 Walker v. Edwards, exceptions  
 Armitage v. Brown, further directions and costs  
 Blewitt v. Stauffers  
 Creaswell v. Balfour  
 Higgins v. Higgins  
 Jackson v. Majoribanks  
 Connop v. Hayward

Graves v. Hicks, fur. dirs. & costs  
 Higginbotham v. Jobson, short  
 Twopenny v. Peyton, further directions and costs  
 Cochrane v. Marsh  
 Clapton v. Bulmer, fur. dirs. & cs.  
 Morgan v. Nasmith, ditto  
 Moore v. Moore, ditto  
 Goldie v. Thomson, ditto  
 Blundell v. Gladstone, exceptions  
 Shuttleworth v. Greaves, further directions and costs,  
 Rickman v. Penney, ditto

NEW CAUSES.

Attorney General v. Brandreth  
 King v. Fleuning  
 Jarman alias Jerman v. Jones  
 Furnival v. Foulkes  
 Gray v. Davis  
 Wyndham, now Earl of Egremont v. Young  
 Cann v. Lethbridge  
 Bruin v. Knott  
 Jackson v. Milfield  
 Thompson v. Kendall  
 Adams v. Nickson  
 Penning v. Green  
 Wilson v. Wilson and Williams  
 Hart v. Hart  
 Davenport v. Coltman  
 Duggin v. Duggin  
 Neeson v. Clarkson  
 Bowser v. Colby  
 Tomlin v. Tomlin  
 Hashold v. Cumine  
 Bagot v. Bagot  
 Franklin v. Nicholl  
 Davies v. Powell

Lake v. Russell and others  
 Bannister v. Davies  
 Roberts v. Allen  
 Blackett v. Maude  
 Gray v. Gray  
 Mc Intosh v. Watson  
 Craddock v. Greenway  
 Lydall v. Dood  
 Jones v. Smith  
 Preston v. Kendall  
 Pett v. Goodford  
 Lightfoot v. Windley  
 Buckworth v. Dashwood  
 Owen v. Williams  
 Lloyd v. Wait  
 Lake v. Austwick  
 Archer v. Slater  
 Stanger v. Morley  
 Jefferys v. Jefferys  
 Campbell v. Walters  
 Bennett v. Pearce  
 Rand v. Mc Mahon  
 Carr (pauper) v. Barker  
 Walker v. Aston  
 Rymer v. Storey  
 Cooper v. Vines  
 Dyball v. Bell  
 Winkworth v. Marriott  
 Irving v. Elliott  
 Cator v. Toone, fur. dirs. & costs  
 Wilkinson v. Popplewell, ditto  
 Richardson v. Pierson, do. short  
 Bingham v. Hallam, ditto  
 Attorney General v. Mayor of Exeter—Ditto v. Cole, ditto  
 Gingell v. Gingell, ditto  
 Norman v. Baldry, ditto  
 Cooper v. Smith, ditto  
 Avarne v. Brown, exceptions

### Before the Master of the Rolls.

#### JUDGMENTS.

Cullingworth v. Loyd  
 Judgments as to advances—Pride v. Fooks—Ditto v. Knott—  
 Ditto v. Fowler—Ditto v. Ditto  
 Ditto v. Ditto, fur. dirs. & costs.  
 Franks v. Price, fur. dirs. & costs.  
 Knight v. Knight

#### PLEAS AND DEMURRERS.

Wood v. Sheppard, plea  
 Saturday 11th of January—  
 FIRST DAY OF TERM,  
 MOTIONS.  
 Monday the 13th.

#### CAUSES.

1st Cause day after term—Partington v. Bailie  
 After Easter T.—Attorney Gen. v. South Sea Company  
 Come on with supplemental causes—Gibbs v. Bowes  
 First day of causes in Easter T. Crallan v. Oulton  
 1st. Cause-day after Term—Attorney General v. Jones  
 Stand over till after further report—Hargitt v. Bell—Ditto v. Ditto—Ditto v. Wilson, fur. dirs. and costs and petition

1st Cause-day after Term—Steer v. Wise  
 Day to be fixed by the Attorney General—Attorney General v. Master of Dulwich College—  
 20th April, 1838  
 Baker v. Harwood  
 Western v. Williams, fur. dirs. & costs.  
 Lane v. Hardwicke—30th April, 1838  
 Stand over—Warsop v. Scrimshaw—31st May, 1838  
 Attorney Gen. v. Whiteman  
 1st Cause-day aft. Easter Term—  
 Attorney Gen. v. Bayley  
 Codrington v. Johnstone—Johnstone v. Codrington, exceptions and further directions and costs  
 1st Cause-day — Knowles v. Mount—Ditto v. Ayles—Ditto v. Parkerson (four causes) fur. dirs., and costs and petitions  
 1st Cause-day of Term—Ray v. Giles, Giles v. Ray  
 Stand over—Wilson v. Mead—  
 7th November 1838  
 Exceptions heard only; rest S. O.—Wormald v. Mackintosh—  
 Ditto v. Ditto, fur. dirs. and costs,

Davies v. Hopkins, fur. dirs. and costs  
 Hodgson v. Charlton, fur. dirs. & costs  
 Hopkins v. Hopkins—Ratcliffe Ditto, fur. dirs. and costs  
 Cooper v. Waldegrave, execs & pftas.  
 Evans v. Thomas, at request of defendants Timothy and Wise  
 Peach v. Evans, execs.  
 Bates v. Bonner, fur. dirs. & costs  
 Raikes v. Boulton, fur. dirs. & cs.  
 Crockett v. Crockett  
 Pearce v. Verbeke—12th Jan.  
 1839  
 Bainbridge v. Burton  
 Price v. Berrington—14th January, 1839  
 Hill v. Maurice  
 Liston v. Sargon—Ditto v. Liston—15th January, 1839  
 Sweeting v. Hellard  
 Cooke v. Isaac  
 Dickenson v. Lord Holland  
 Aldworth v. Robinson—16th Jan.  
 1839  
 Stevenson v. Smith  
 Mellish v. Brooks—17th Jan., 1839  
 Ross v. Hafford

Roberts (pauper) v. Lloyd—21st January, 1839  
 Townsend v. Westacott  
 Levy v. Pendergrass  
 Shilcock v. Gregg, at defendant's request  
 Colebrook v. Williamson  
 Hughes v. Brigstocke—Lawrence v. Ditto, at request of defendant.  
 Gaunt v. Taylor, further directions and costs  
 Scott v. Cattley  
 Bennett v. Fowler, further directions & costs  
 Walker v. Earl of Abingdon, exons. 2 sets, & fur. dirs. & costs  
 Martin v. Drinkwater—Ditto v. Darien, exceptions, 2 sets further directions & costs  
 Dickenson v. Player, fur. dirs. & costs  
 Johnson v. Woods—Smith v. Johnson, fur. dirs. and costs  
 Whitby v. Martin, fur. dirs. and costs  
 Bevan v. Flight  
 1st day of causes—Sidmouth v. Sidmouth—Ditto v. Lord Eldon  
 Ankers v. Sandford  
 Bolton v. Powell  
 Rhoades v. Cartwright  
 Sparke v. Mann, exons. fur. dirs. & costs  
 Ring v. Hardwicke, fur. dirs. and costs  
 Smith v. Birch—Ditto v. Ditto, exons  
 Hoggard v. Clark, fur. dirs. & costs  
 Filder v. Bellingham, at deft's request  
 Parlby v. Gilmore—Ditto v. Tyler  
 Seaber v. Harlock, fur. dirs. & costs & petus.  
 Flashman v. Powell—Ditto v. Ditto—Bruen v. Ditto, fur. dirs. & costs  
 Heighington v. Grant—Ditto v. Heighington—Ditto v. Grant, exceptions  
 Smith v. Birch—Ditto v. Ditto, fur. dirs. & costs  
 Borrell v. Dann, exceptions  
 Green v. Challenor, fur. dirs. & costs  
 Johnston v. Todd—Ditto v. Ditto—Ditto v. Ditto, exons. fur. dirs. and costs  
 Bleasie v. Burgh, fur. dirs. & costs  
 Martin v. Swannell, fur. dirs. & costs  
 Cole v. Dawson—Ditto v. Ditto—fur. dirs. and costs  
 Cockell v. Pugh, fur. dirs. & costs  
 Moore v. Painter, 16th April, 1839  
 Tylee v. Stace  
 Griffin v. Griffin  
 Attorney General v. Lister—Not before Trinity Term  
 Cantrell v. Sutton  
 Gater v. Clive—Ditto v. Fenton, 18th April, 1839  
 Smith v. Langford  
 Wainewright v. Hardisty  
 Stocken v. Harbin  
 Wade v. Cox, 19th April, 1839

Mills v. Hudson, at defendants Chambers and Hick's request  
 Hoggart v. Cutts  
 Suckermore v. Dimes  
 Attorney Gen. v. Bosanquet, 20th April, 1839  
 Skipworth v. Skipworth  
 Howard v. Harrison, at deft's. reg.  
 Tanner v. Dancey  
 Merridew v. Woodward—25th April, 1839  
 Attorney Gen. v. Kerr, Ditto v. Wales—10th May, 1839  
 Palmer v. Wakefield, fur. dirs. and costs  
 Davies v. Davies—17th May, 1839  
 Bater v. Webber, fur. dirs & costs  
 Gordon v. Hendrie, exceptions  
 Cotham v. West, exceptions  
 Williams v. Bown—23rd May, 1839  
 Neale v. Samples, at request of defendant Hunt  
 Styles v. Styles  
 Boyle v. Irby  
 Jackson v. Ernest  
 Knight v. Frampton—set down May 24, 1839  
 Aldrick v. Cockbarn—Short—Stand over to amend  
 Artis v. Artis  
 Webb v. Stait—set down, May 25, 1839  
 Bailey v. Earle  
 Attorney Gen. v. Saddler's Co.  
 Sanders v. Howell  
 Pyke v. Northwood  
 Maher v. Burn—set down May 27, 1839  
 Brooks v. Cooper  
 Attorney General v. Stevens  
 Staile v. Palsgrave  
 Brandon v. Woodthorpe—subpoena notes returnable, May 28, 1839—set down May 28, 1839  
 Mayston v. Clark  
 Barton v. Chambers  
 Lewis v. Deere—Lewis v. Thomas—subpoena notes returnable, May 29  
 Tyler v. Tyler  
 Ellis v. Griffiths—Ditto v. Carns  
 Rudall v. Barry—subpoena notes returnable, June 7  
 Lord Suffield v. Reed—subpoena notes returnable, June 7  
 Kellaway v. Johnson—subpoena notes returnable, June 17  
 Sheppard v. Sheppard (four causes), fur. dirs. & costs—set down May 28, 1839  
 Attorney Gen. v. Brickdale, fur. dirs and costs—set down, May 29, 1839  
 Beasant v. Clare, exceptions—set down, May 30, 1839  
 Hamer v. Hickman—Ditto v. Richards—subpoena notes returnable, June 15  
 Page v. Broom—Ditto v. Page—Ditto v. Hams—Ditto v. Edwards — Ditto v. Ganderton, exceptions—set down, June 6, 1839  
 Buswell v. Underwood—subpoena notes returnable, June 26, 1839  
 Wilkins v. Stevens (four causes), Ditto v. Cornewell—Ditto v. Ditto—Ditto v. Hawkins, exceptions—set down June 12, 1839  
 Wild v. Hardy—subpoena notes returnable June 28  
 Carter v. Bentall—Ditto v. Mendum, fur. dirs. and costs—set down June 12  
 Whittle v. Heming — subpoena notes returnable June 29  
 Buckmaster v. Rothrey—set down June 18  
 Gilbertson v. Webster—Ditto v. Ditto, fur. dirs and costs—set down June 20  
 Benbow v. Curling—Ditto v. Francis — subpoena notes returnable July 13  
 Attorney Gen. v. Mayor of Leicester—subpoena notes returnable July 16  
 Attorney Gen. v. Cooper's Company—subpoena notes returnable July 9  
 Attorney Gen. v. Miller—subpoena notes returnable July 16  
 Robinson v. Addison—Ditto v. Robinson—subpoena notes returnable July 12  
 Lichfield v. Baker, fur. dirs. and costs—set down June 26  
 Montgomery v. Calland—Ditto v. Patrick—Edwards v. Ditto, exceptions.—set down July 4  
 Bastard v. Bailey—subpoena notes returnable July 22  
 Butler v. Bushnell—Ditto v. Ditto — Ditto v. Young—Bushnell v. Bushnell — Ditto v. Ditto — fur. dirs & costs & supplemental bill—set down July 10  
 Woodcock v. Rerneck—set down July 13  
 Beasant v. Clare—set down July 19  
 Noble v. Noble—Short—Stand over, fur dirs & costs — set down August 5, 1839  
 Hardwicke v. Richardson—Ditto v. Ditto—Ditto v. Jones, fur. dirs. & costs—set down, Aug. 5  
 Salmon v. Jones—Ditto v. Salmon fur. dirs. and costs—set down Aug. 6  
 Montresor v. Montresor, fur. dirs. & costs—set down, Aug. 7  
 Hotham v. Somerville—Ditto v. Ditto, fur. dirs. and costs—set down August 8  
 Robertson v. Crawford, exons & fur dirs & costs—set down Aug. 9  
 Stevens v. Webb—Ditto v. Nash — Ditto v. Hards, fur. dirs. & costs—set down August 16  
 Davis v. Davies, fur. dirs. & costs—set down August 23  
 Goodeough v. Tremunondo, fur. dirs. & costs—set down Aug. 24  
 Young v. Powys—subpoena notes returnable, Nov. 4  
 Morgan v. Morgan  
 James v. James  
 Reeve v. Cann—subpoena notes returnable, Nov. 5

Corbett v. Corbett  
 Park v. Upton, at request of defendant Smith  
 Barnard v. Pomfret  
 Stephens v. Stephens—subpoena notes returnable, Nov. 6  
 Clegg v. Humphries  
 Prentice v. Fairbrass  
 Shepherd v. Morris  
 Chevely v. Cheveley—subpoena notes returnable, Nov. 7  
 Crosswell v. Lord, Kensington  
 Attorney General v. Powle  
 Short—Stand over—Hobbs v. Hobbs  
 Roberts v. Graves—subpoena notes returnable, Nov. 18  
 Price v. Waterhouse—Ditto v. Silvei, fur. dirs. & costs—set down, Nov. 6  
 Paris v. Hughes—Paris v. Tebbutt, exceptions  
 Morgan v. Pulman—subpoena notes returnable, Nov. 25  
 Haward v. Lucy, fur. dirs. & costs—set down, Nov. 11  
 King v. Wheeler—Gale v. Farmer, fur. dirs. & costs—set down, Nov. 12  
 Atkins v. Atkins—Subpoena notes returnable, Dec. 23  
 Mason v. Bogg, fur. dirs. & costs—set down, Nov. 18  
 Gray v. Foat—subpoena notes returnable, Dec. 5  
 Smith v. Alcock—subpoena notes returnable, Dec. 17  
 Attorney General v. Kell—subpoena notes returnable, Dec. 18

Tinkler v. Hindmarsh, fur. dirs. & costs—set down, Nov. 23  
 Day v. Holbrook, fur. dirs. & costs—Nov. 25  
 Attorney General v. Plater—subpoena notes returnable, Dec. 23  
 Attorney General v. Dudley  
 Attorney Gen. v. Jesus Hospital  
 Attorney General v. Foord  
 Attorney General v. Mayor of Colchester  
 Attorney General v. Draper's Co.  
 Mandale v. Dodgson, fur. dirs. & costs—set down, Dec. 6  
 Wiggins v. Peppin—Ditto v. Clarke—Ditto v. Peppin—subpoena notes returnable, Dec. 23  
 Walond v. Walond, exons. fur. dirs. & costs—set down, Dec. 9  
 Rycroft v. Christy, exons. & fur. dirs. & costs—set down, Dec. 19  
 Short—Buxton v. Buxton, fur. dirs. & costs  
 Gregory v. West—Ditto v. Werton, fur. dirs. & costs—set down, Dec. 23  
 Glynn v. Sawle, exons. & fur. dirs. & costs—set down, Dec. 23

## NEW CAUSES.

Monday the 13th Jan.

Attorney General v. Draper's Co.  
 Stocker v. Belcher  
 Graham v. Oliver  
 Ambler v. Tebbutt  
 Barrow v. Budd  
 Hodges v. Croydon Canal Co.

Tuesday the 14th Jan.  
 Short—Page v. Way  
 Cocker v. Evans  
 Tamlyn v. Loosmore, request defendant  
 Howard v. Prince  
 Farrow v. Reece  
 Witley v. Mangles  
 Wednesday the 15th Jan.  
 Penzer v. Penzer  
 Gillett v. Peppercorne  
 Fortnum v. Macdonald, request of defendant  
 Greenlaw v. King  
 Wigley v. Whitaker  
 Thursday the 16th Jan.  
 Hartshorn v. Eastern Counties Railway Company  
 Cherrington v. Moore, at request of defendant  
 Rider v. Edwards  
 Gibbs v. Scott  
 Hodgson v. Crook  
 Friday the 17th Jan.  
 Ladley v. Clerk—Ladley v. Williamson  
 Saturday the 18th Jan.  
 Monday the 20th Jan.  
 The Registrar's Day.  
 Rhoades v. Cartwright  
 Tuesday the 21st Jan.  
 The Master of the Rolls Day.  
 Attorney General v. Phillips  
 Attorney General v. Bullen  
 Attorney General v. Brettingham

## Queen's Bench—CROWN PAPER.—Hilary Term, 1840.

Carmarthenshire—The Queen v. Stephen Jones  
 Herts—The Queen v. The Rev. W. Capel, clerk  
 Middlesex—The Queen v. The Commissioners of Southampton Estates  
 Lincolnshire—The Queen v. The Inhabitants of Wainfleet All Saints  
 Surrey—The Queen v. Richard Sterry and another  
 Durham—The Queen v. Walker Featherstonhaugh  
 Exeter—The Queen v. Edward Mc'Gowan  
 Exeter—Same v. Same

Stafford—The Queen v. C. Dudley  
 Devonshire—The Queen v. Inhabitants of Exminster.  
 Durham—The Queen v. John Marquis  
 Lancashire—Queen v. Churchwardens of Manchester & ors.  
 Durham—The Queen v. Inhabitants of Middleton-in-Teesdale  
 Bridgwater—The Queen v. Matthew Paramore  
 Yorkshire—The Queen v. Inhabitants of Ravenstondale  
 Notts.—The Queen v. G. Kelk  
 London—The Queen v. T. Wilson  
 Same—Same v. Same

Yorkshire—The Queen v. Inhabitants of Darton  
 Surrey—The Queen v. John Host  
 Cambridge—The Queen v. Richd. Eaton & anr., Justices &c.  
 England—The Queen v. Eastern Counties Railway Company  
 Durham—The Queen v. James Colbeck and another  
 Cheshire—The Queen v. W. Axon  
 Lancashire—The Queen v. R. Gould  
 Lancashire—The Queen v. Thos. Hardcastle  
 Merionethshire—The Queen v. Richard Thomas

## THE EDITOR'S LETTER BOX.

We think the edition of Blackstone, mentioned by "a New Subscriber" at Reading, is the most useful one.

A Correspondent at Somerton shall receive early attention.

We have complied with the request of an Articled Clerk residing at Sheffield.

A subscriber at Ashton need not apprehend that any objection will or can be taken to his admission, on the ground stated in his letter.

The Letter of "An Old Subscriber" as to effect of 5 & 6 W. 4, c. 4, on the marriage of British Jews, shall be considered.

Wellesley v. Wellesley.—In the 2d line of the first *placitum* to this case at p. 186, read "her" for "his" trustee; and in the 5th line read "C." for "B." In the 2d *placitum* read "part" for "fact." In the 11th line of the first column, p. 187, for "1826" read "1834." In the first column of p. 188, fifth line from the bottom, read "Mr." for "Mrs." Wellesley.

# The Legal Observer.

SATURDAY, JANUARY 25, 1840.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## CHANCERY REFORM.

ALTHOUGH the Royal Speech, on the opening of Parliament, contains no direct allusion to Chancery or any other law reform, yet we have every reason to believe that the present session will be a most important one in that respect; more especially in carrying into effect several measures which have for some time been pending. Among these, perhaps, the most important is that of Chancery Reform: and although notice has not been given of any bill relating to it, yet we understand that the Lord Chancellor is prepared to bring forward a measure as speedily as possible. In the meantime the converts to the necessity of an extensive reform become daily more numerous; and it will be our duty to keep the subject constantly before the attention of the profession and the public; to endeavour to direct the feeling into the proper channels; to collect all the opinions relating to it; and thus to promote as far as in us lies, the adoption of the true remedy for the existing evils.

In pursuance of this object, we have great pleasure in bringing under the notice of our readers a pamphlet just issued by Mr. Spence, being his "*Third Address to the Public, and more especially to the members of the House of Commons, on the present unsatisfactory state of the Court of Chancery,*"\* which not only clearly gives the precise state of the question at the present time, but adds much information respecting it. We are also glad to perceive that Mr. Spence appears to have now abandoned the opinion avowed by him in a former address, in which we then respectfully differed from him, that the appointment of an additional judge was all that could be done in

the first place, and that a more extensive reform, although much to be desired, could not be effected. We have now for many years been labouring to show that the whole of the existing grievances must be looked to, in order to find the proper remedy for any part; that the appointment of a single judge would do but little good, if indeed, it did not do positive harm; and we have recently had the gratification of finding these opinions almost universally confirmed. The only authority of importance in favour of the bare appointment of an additional judge is Lord Lyndhurst, and he distinctly stated that he did not intend this view to be a final one. We are glad therefore to find that Mr. Spence concludes his present address as follows: "The profession and the public have been led by the occurrences of the past year to entertain hopes that something is in contemplation for the improvement of the administration of justice in the Courts of Equity. The known and often-expressed opinions of the Lord Chancellor would almost justify the entertaining a confident expectation that the measure proposed will be at once comprehensive and effectual. I should be rejoiced, if in consequence of the carrying of such a measure, this should be my last address on the subject of the Court of Chancery."

We now proceed to give some account of the present address, but we strongly recommend such of our readers as are interested in the subject, to put themselves in possession of it, as every word is valuable. It consists of a review of the various occurrences which have recently taken place respecting Chancery Reform: — the debate on Lord Lyndhurst's motion in June last, — the proceedings in the House of Commons, — the various orders which have been obtained for

\* Published by Walker, Strand.

returns<sup>b</sup> relating to the business of the Court of Chancery,—our own humble exertions in the cause, which Mr. Spence is so good as to notice,—and the recent article on the subject of Chancery Reform in the last number of the *Quarterly Review*.—But as all these matters are familiar to our readers, we shall extract some remarks as to the present state of the business now before the Courts; reserving for some future occasion some interesting remarks as to the Court of Chancery in New York.

"1st. In the Lord Chancellor's Court.

It may be remembered that on the first day of Hilary Term, 11th January, 1839, the number of matters waiting for hearing on the list of the Lord Chancellor and Vice Chancellor was

556

On the first day of Easter Term, 15th April, the number was

607

On the 1st day of Michaelmas Term, 2d November, the number was

634

In the book delivered for Hilary Term next, the number is

664

Of these, about 79 have become abated by the deaths of parties, 25 have been ordered to stand over.

At the Rolls,

On the 11th January, the number of matters on the list waiting for hearing was

303

On the 15th April

249

On the 2d November

215

In the book delivered for Hilary Term next, the number is

227

The arrear, therefore, in the two courts exceeds by 32 what it was at the beginning of the year. In the Court of the Lord and Vice Chancellor, that which needed most assistance, the arrear of causes has increased by 103; besides which, there was on the first day of Michaelmas Term (2d November) an arrear of 101 petitions, to which 50 were added by the third day of the term; the arrear of petitions is, I believe, now quite as large.

We must also find room for the following account of the progress made in the cause list in the Vice Chancellor's Court.

"At the commencement of Easter Term, (15th April, 1839,) the cause of *Ryan* and *Hill* stood first on the list of causes for hearing. In Trinity Term, 22d May, following, there it remained. On the 27th July, 1839, it came into the paper, and was partly heard; it never again was reached until the 13th of November, when it again appeared in the paper of causes. It continued in the paper for eleven days until the 11th December, when it was heard. In the interval, however, the judge and counsel had of course forgotten everything that had

<sup>b</sup> One of these orders, not the least important, is omitted by Mr. Spence. It was an order obtained by Mr. Hayter in the beginning of the year 1838. As far as we are aware no returns have been made to any of these orders—for what reason we cannot imagine.

passed on the original hearing, and the cause was accordingly opened as if it had never before been heard: twelve fees became payable to every solicitor in the cause, for which the clients got no benefit, and for twelve days the solicitors were compelled uselessly to be in attendance, waiting the hearing of the cause.

"The following is the history of the cause of *Banks v. Lord le Despencer*, which stood in the list a little below the cause of *Ryan v. Hill*.

"In July 1838, it was in the regular paper of the day for hearing; it was not heard; and, as I am informed, never again made its appearance in the paper until the month of July 1839.

After Michaelmas Term last, on a special application being made for the purpose, all parties being equally desirous that it should be heard, it was ordered to be put at the head of the paper on the first day of causes. Accordingly there it appeared, but the Vice Chancellor was unable to reach it, owing to motions and other pressing business, and it remains unheard to this hour.

"The Vice Chancellor's Court is overwhelmed with motions and other urgent business, of which a large portion arises in suits relating to railways. Of the forty-five days the Vice Chancellor has sat since the 2d of November, twenty-five, as appears by the daily court papers, have been devoted almost entirely to motions; the rest, with the exception of that on which the cause of *Ryan v. Hill* was heard, have been devoted to petitions, causes in which there was some short point to be determined, and causes and petitions of an urgent nature, which have been advanced or brought on, on the special application of counsel. The whole number of causes heard by the Vice Chancellor in regular order, during the last year, appears, from an examination of the list, to be seventeen, making, together with those heard by the Lord Chancellor, fifty-two in the whole. This is exclusive of the short, and consent, and other causes, which have been heard by the Vice Chancellor out of the regular order, or have been struck out or withdrawn. One hundred and eight have, in the same space of time, been added to the list of arrears.

"I need not add, that the Vice Chancellor has, during the whole time, in and out of Court, given unremitting attention to the business of his Court; the actual amount of orders made by him has been immense; and notwithstanding all this delay in the ultimate hearing of contested causes, the numbers set down in this Court are disproportionately large."

On this subject we have also received the following letter:—

To the Editor of the *Legal Observer*.

Sir.

I HAVE perused your able papers on this important subject, and with your permission will state a few ideas that have suggested themselves to my mind in the progress of reading.

On reflection, I think it must be conceded that not a few of the incongruities of many of

the recent reforms and orders have arisen from the hasty mode of preparing them, grounded on the views of parties incompetent to foresee the working of their measures in the different offices. What, indeed, could be expected from the operation of orders for the regulation of business in the Registrars and Masters' Offices:—drawn up by a solicitor of high standing in his profession, certainly, but who never attended to the minor details of business, and by an agent in the Six Clerks' Office, the last of those "Titans" of whom (as you remark) the late Messrs. Shaddick and Jackson were brethren, but whose traditional knowledge, as you also aptly observe, was destroyed by the late act and subsequent orders.

What appears to me to be the proper mode of arriving at all the information requisite to remedy the existing evils, would be to appoint a commission or committee, to consist of, for instance, two counsel of repute behind the bar, two registrars, two masters, and two of their chief clerks, two clerks in court, two or three working solicitors, and any other parties competent to give an opinion on the subject. By such an arrangement, I think, we must arrive at the source of the present evil. Let a new act, or new order, be founded on their report.

And here I would take occasion to remark whether the present system of salaries is or not the best mode of remunerating the officers of the Registrars and Masters' Offices. I have heard some of the most eminent town solicitors complain that the delays in those departments are far greater than under the old system. Far be it from me to justify the abuses of the old system of fees,—this I will say, that it gave more satisfaction to solicitors generally, as parties would inconvenience themselves by working over-hours to earn a gratuity,—and surely it was well merited. Now, parties punctually receive their salaries, whether they do their duty or not. I merely throw out this as a suggestion, without pledging myself to its defence.

With respect to the delays in the Masters' Offices, I really believe that the delays there are in a great measure attributable to the solicitors themselves. A decree or order is left in the Master's Office: how can the Master be held responsible for its progress?—it all depends on the solicitor in the suit; and, in fact, you may carry the proposition farther, and say it is the client's fault, for not pushing his solicitor on. From several Masters I have received such expressions as these, to my remarks of the importance of a speedy termination of a matter before them:—"Well, I am in your hand; I am ready to proceed *de die in diem*;" and I am sure they are all anxious to do their duties. Perhaps a decree or order contains one or two important inquiries, amongst others of less importance: numerous attendances are had before the Master, and at last he gives his decision on the important point. A warrant to shew cause is then probably taken out, on attending which it is discovered that there are several other inquiries to be answered, which have been lost sight of in the magnitude of other points. How common is this case!

It appears generally acknowledged that more assistance might be advantageously employed in the Masters' Offices; and this leads me to mention an oversight that has occurred in the operation of the late act. The junior or copying clerks in the Masters' Offices have been stated,—and it has never been contradicted to my knowledge,—to clear 80*l.* per annum, and some even more. Now, what do they do towards the business of the offices? Their sole occupation is to issue the warrants and give out papers to be copied, from which copies their disproportionate incomes chiefly arise. The act gives them 150*l.* per annum, and this we must suppose was estimated to be nearly the value of their services, and in addition they were to take three-halfpence a-folio on all the copies they made, it never being supposed that that would give them these larger incomes. Now it appears perfectly rational to expect that something more than merely issuing warrants (which a child might do) should be required of the copying clerks in return for their large incomes: but what that should be, from their deficient education, I am scarcely in a position to say.

It has been stated that the chief clerks might advantageously be kept to drawing reports more exclusively, and each have an assistant, who might check accounts, prepare certificates, and other matters of minor importance. I do not agree with the Quarterly Reviewer, that accounts should be transferred to a regular accountant, it often happening that each item in an account is contested in all its legal bearings, and requires some one of legal education to decide the question.

I am at a loss to conceive what object would be gained by the admission of the public to the Masters' Chambers during the hours of business. If the public took advantage of such a permission, the suitors must certainly be inconvenienced, and it is they who pay for the present accommodation: the offices would then present somewhat of the appearance of the Police Offices, and the nuisance become intolerable. The public would also be at a loss to understand when they saw a paper of ten causes, for instance, stuck up, to find that half of them had gone off by arrangement among the solicitors, such as orders for time, &c. of which they (the public) would be ignorant, and their ideas of the Court would by no means be improved.

It is gratifying to observe, that both the Lord Chancellor and the Master of the Rolls are intent on promoting a reform; but there is this drawback, that each has a plan of his own, and employs his separate agent to collect information. It is to be hoped that the old saying, "while doctors differ the patient dies," will not be borne out on the present occasion.

Each member of the profession must lend a hand, and bear a loss, if necessary, for the public good. Junior counsel must not be deprived of their half-guinea fees to give solicitors a new 6*s.* 8*d.*—nor the latter despoiled to enrich the clerks in Court, and *vice versa*, but with one heart and mind all classes should put

forth their energies, and we may then expect (to borrow an old metaphor) to see the good ship Chancery thoroughly careened and improved, sail smoothly over the troubled waters of discord and perplexity, laden with the treasure and best wishes of our country, and instead of being held in scorn and derision, pointed out as the chosen guardian and defender of the rights and consciences of the poor as well as the rich.

TEMPLAR.

### THE COPYHOLD ENFRANCHISEMENT BILL.

The Copyhold Enfranchisement Bill, according to the understanding at the end of the last session,<sup>a</sup> was brought in by Lord Brougham on Monday last, and was read a first time. On Tuesday, its scope and chief objects were stated by his Lordship in an able and very moderate speech. He said that it differed but little from the bill of last session as introduced into the Lords, except that he was desirous of introducing certain compulsory clauses, but that he proposed that the whole details of the measure (the principle being admitted) should be referred to a Select Committee. This proposition met with the general assent of the House, and the bill was read a second time, and the Select Committee nominated on Thursday. In our two last volumes will be found ample information respecting this measure, as we devoted much space and time to bringing all the information respecting it before our readers. Thus, we printed at length all the evidence respecting it contained in the Appendix to the Real Property Reports, 17 L. O. pp. 209, *et seq.* We also gave Mr. Stewart's Bill, (which is in fact, as we believe, identical with the one now introduced) 17 L. O. pp. 359, *et seq.*; and much other information will be found under this head in these volumes. We have already expressed ourselves in favour of Mr. Stewart's Bill, and we think this is the general opinion of the profession; but as we are only anxious for the right settlement of the measure, we are quite open to receive any suggestions on either side of the question.

### PRINCE ALBERT's NATURALIZATION BILL.

By 7 Jac. 1, c. 2, every person is required to receive the sacrament of the Lord's Supper, within one month before any bill

of naturalization be exhibited, and also to take the oaths of supremacy and allegiance in the Parliament House, before his bill be twice read; and by 1 G. 1, st. 2, c. 4, no person shall be naturalized, unless in the bill exhibited for that purpose, a clause be inserted, to declare that such person shall not thereby be enabled to be of the Privy Council, or a member of either House of Parliament, or take any office of trust, or to have any grant of lands; and by 6 G. 4, c. 67, reciting the act of James, it is enacted, that after the passing of that act, it shall not be necessary for any person who is to be naturalized, to receive the sacrament. A bill was brought in on Monday to provide that a bill for the naturalization of Prince Albert, may be exhibited without the clause mentioned in the recited act of 1 G. 1, and without his Highness taking the oaths of supremacy and allegiance. A special bill of naturalization will therefore be founded on this bill when it shall pass, and we should think it not unlikely that it will provide for the precedence of the Prince. By stat. 31 Hen. 8, c. 10, the children and grandchildren, brethren, uncles and nephews of the sovereign, stand first in the table of precedence. Now it will probably not be thought unreasonable, that the husband of the Queen Regnant should stand next in rank to her Majesty. But to do this, as we conceive, it will be necessary to give him this rank by act of parliament, as otherwise, the uncles and aunts of the Queen would rank before him. Of course his Highness, after the act of naturalization be passed, may be created a peer, or be raised to any office or dignity in the state, by the authority of the Crown.

### NOTICES OF NEW BOOKS.

*The Poor Law Amendment Acts; with Explanatory and Practical Notes; also an Introduction and Appendix; with Forms, and the Commissioners' Rules, and Remarks upon them.* By S. R. Bosanquet, Esq., of the Inner Temple, Barrister at Law. London: A. Maxwell. 1839.

Mr. Bosanquet has availed himself, in this edition of the Poor Law Amendment Act of the various decisions which have taken place during the five years which have elapsed since the act came into operation, and he has added to his work the several acts which have been passed on the subject since the general act in 1834. It is of advantage to the profession to have the new

<sup>a</sup> See the debate, ante, p. 81.

statutes, accompanied, as soon as they come out, with the best notes and explanations that can be prepared; but such notes are necessarily imperfect. It is only after an act has undergone judicial investigation in its main provisions that the exact change can be precisely determined. What the legislature may have intended, may be well known to the framers of the bill, but those who have to carry the law into effect must be guided solely by what is expressed in the statute.

Mr. Bosanquet commences his introduction by stating that

"A good deal of doubt and misapprehension has existed as to the general effect of the Poor Law Amendment Act. Its provisions have given rise to more disputes and questions than any other recent act; and they have been canvassed with a degree of activity and interest, only to be accounted for by a prevailing dislike and mistrust of its general use and object."

"It is conceived, however, that this feeling is little merited by the act itself; and has arisen from a misapprehension of its general effect, and misinterpretation of some of its leading enactments, rather than from a correct view of its principles and provisions. The agents of the commissioners have partaken of this misapprehension. With a statute hastily prepared and worded, and in which economy of words is one of the prevailing features; and with a disposition to wrest and extend its ill-defined provisions to their own preconceived opinions of what ought to be its design,—they have raised up an opposition to their usefulness, which might have been in a great measure avoided.

"Already has the Court of Queen's Bench been compelled to set aside several of the orders of the commissioners; and others, apparently founded in no more correct rules of interpretation, will, if not shielded by special acts of parliament for the purpose, in all probability, be pronounced illegal. Numerous applications and cases for decision are now pending in the Court of Queen's Bench, and these must continue to increase, unless the true meaning of the act becomes better understood, and more justly appreciated.

"Under these circumstances, it has been thought possible, that an exposition, founded upon a close study of the statute, might prove acceptable and beneficial. This exposition particularly relates to the powers and duties of the commissioners, and of the guardians and other authorities having the administration of the Poor Law and poor relief under their control. No part of the act, however, has been neglected; and all the decisions of the courts upon matters arising out of it have been carefully collected.

"This introduction will contain, first, a general outline, and then a more particular statement of the effect and provisions of the act; and next, a view and examination of the

respective powers and duties of the commissioners, and of justices, guardians and overseers, who have the administration of the law and of relief. The particular exposition of the peculiar powers and enactments and provisions, is contained in the notes appended to the respective sections."

The work contains a general outline of the act of 4 & 5 W. 4, c. 76, followed by a particular outline, including the powers and duties of the Commissioners, the Justices, the Guardians, and the Overseers. The several statutes are then stated *verbatim*, and the notes comprise, we believe, all the cases decided since the acts passed. We wish there had been a table of these cases, which would have made the work more complete, and have better shewn the extent of the author's labour. The notes are very valuable, giving the substance of the decisions, with many judicious remarks on their bearing and effect.

In an appendix is contained, the forms, rules, and regulations of the commissioners, the opinions of the law officers of the Crown, with various observations, and a very copious Index.

#### ON PRESENTATION TO A BENEFICE BELONGING TO A ROMAN CATHOLIC PATRON.

By several acts of parliament (3 Jac. 1, c. 5; 1 W. & M. c. 26; 12 Ann. stat. 2, c. 14; and 11 Geo. 2, c. 17) the presentations to such benefices as belong to Roman Catholic patrons are vested in the two universities in this kingdom. By stats. 12 Ann. st. 2, c. 14, s. 4, and 11 Geo. 2, c. 17, besides the wits of *quare impedit* to which the universities as patrons are entitled, they or their clerks may file a bill in equity against any person presenting to such livings, to compel a discovery of any secret trusts for the benefit of papists. The following decision has very recently been made on these statutes.

"The point at issue between the parties comes to this: whether the right of presentation is given to the universities by the statutes 3 Jac. 1, c. 5; 1 W. & M. c. 26; & 12 Ann. st. 2, c. 14, in case of the disability of one co-patron only out of many; or whether it is so given only in the case where a sole patron, or all who have the right of patronage, is or are disabled by professing the Roman Catholic Religion. And the first observation that arises is, that as the words of the disabling clause in the statute of James are general, clearly extending to and comprising every person that is a popish recusant convict, that is, as enlarged and explained by the sub-

sequent statutes, every person professing the Roman Catholic religion, it follows that all which was intended to be effected by the legislature is completely accomplished, where there are several joint-tenants or tenants in common of the right of patronage, by holding the statute in those cases to affect no more than the simple disability of all the co-patrons who are Roman Catholics. For if the right of presentation, by the operation of the disabling clause, becomes limited to the protestant co-patrons only, the avoiding of any popish bias or influence in the selection of an incumbent, which is the real object of the statute, is attained as completely as if the right of presentation as to the share or portion of the Roman Catholic co-patron is given over to the universities. There is therefore no necessity, in order to effectuate the object of the legislature, that the presentation in such case should be held to vest in the universities; and the question therefore, becomes this, whether the words of the statute require that interpretation. And upon this point it appears to us there is a marked distinction between those words of the clause which confer the presentation on the university and those of the disabling clause. The clause in the statute of James, which gives the presentation to the university, enacts "that the university shall have the presentation when it shall happen to be void during such time as the patron thereof shall be and remain a recusant convict as aforesaid;" and although these words are not repeated in the statutes of William & Mary and of Anne, still we consider them as virtually incorporated therein, as a direct reference is made in both the latter statutes to the statute of James, and they are declared to have been passed, in order to carry into effect the intention of the former law. And we cannot but think that it will give full force and effect to this transferring or vesting clause of the statute, if it is considered as extending no further than to the case where the patron, if a sole patron, is a Roman Catholic, or where all the patrons, if there are several claiming under the same title, are of the same persuasion. And this observation is entitled to more weight when it is considered that the statute of James gives no interest, but a power only, to the universities, as is observed by Hobart, C. J., in the case of *Duncombe v. The University of Oxford*, Winch. 11. And it is well established that the words creating a power must be strictly interpreted: and undoubtedly it will be found, in all the cases and precedents which have occurred in Courts of Law, that the claim of the universities has been made only where there has been a sole patron who was a recusant convict. (See Winch's Entries 771, Lutwyche 1100, in a quare im-pedit against the Chancellor, &c. of the University of Cambridge; the case in Hob. 126, and that in Winch's Rep. 11.) And so far as we have been able to search, no precedent is found of a claim by the university under a joint right to present with a Protestant co-patron. But, still further, the interpretation contended for on the part of the defendants, would work an injury to

the patronage of the Protestant co-patron. For by section 5 of the I. W. & M., the chancellor and scholars shall not present or nominate any person who shall then have any other benefice with cure of souls, under pain of the presentation being utterly void. And again by sect. 6, it is enacted that no person so presented to any benefice with cure of souls, shall be absent from the same above the space of sixty days in any one year, under the penalty that the benefice shall become void. And these two restrictions, which are very properly placed under the power of presentation, when the university takes the whole, throw a burden upon the right of presentation belonging to the Protestant co-patron, which did not exist before. And as there could be no possible reason for the enactment, which should operate against the rights of a Protestant co-patron, we think these clauses afford a key to the meaning of the statute, and shew that the legislature had nothing in view beyond giving the power to the universities to present, where, by the recusancy of the patron, or all the patrons, under the same title, the whole power of presentation would devolve on them. Upon the whole therefore, we think that the case of the transfer to the universities of the power to present, where one or some only of the co-patrons are disabled, is either a *casus omissus* in the statute, and then we cannot extend the statute to comprehend it; or that the legislature designedly excluded it, or confined the vesting of the power of presentation in the universities to a vesting of the entire right: in either of which cases the judgment must be for the plaintiff. And by this construction no injury can be occasioned in any case to the ordinary, who at all times has a clear course to follow, perfectly free from all doubt, whereby he can never be treated as a disturber, *viz.* the admitting and instituting the presentee of the one Protestant co-patron; for, according to Co. Litt. 186, b., "if one joint-tenant, or tenant in common present severally, the ordinary may either admit or refuse to admit such a presentee, unless they join in presentation; and after six months, he may in that case present by lapse." Judgment for the plaintiff. *Edwards v. The Bishop of Exeter*, 5 Bing. N. C. 652.

## THE STUDENT'S CORNER.

### WILLS ACT.

Sir,

I PERCEIVE in the Legal Observer of 28th December, page 169, a letter entitled "Wills Act," which gives a brief statement of a discussion that lately arose respecting a devise under rather peculiar circumstances; the writer concluding by saying that he should feel considerably indebted to any of your contributors who might deem it worth while to state any argument which supported the doctrine therein laid down.

Upon reference to the case it will be observed that a father devises to his son in fee simple, who dies in the life-time of his father,

leaving previously by his will disposed in general words of all his real estate to an entire stranger in blood. The son, when he died, left issue a son, who was alive at the death of his grandfather. It was contended that the grandson had no interest in the estate, but that the devisee of the son was entitled to it; and the ground upon which such opinion was formed, was 1 Vict. c. 26, s. 33. This is a brief outline of the subject which has given rise to doubts and discussion.

The above-mentioned clause in the act deserves particular notice, for it is not the issue of the deceased devisee or legatee who is put into his place to receive the bounty of the testator; but it is the person who would have been entitled to receive it if the deceased devisee or legatee had survived the testator and died shortly afterwards.

Suppose, therefore, that the deceased devisee or legatee had left a will, and disposed of the property intended for him by his father's will, his legatees would be entitled to it as such, though they might be strangers in blood.

Security would be effected, therefore, in order to prevent disappointment, where any legatee or devisee, being a child or other issue of the testator, die in his lifetime, leaving issue, whom the testator might wish to substitute for the deceased person, by making a codicil to his will, expressly giving to them in unequivocal terms, the property which had been given to the deceased.

To support the doctrine laid down which the author of the letter alludes to, it must be shewn that the son at the time of making his will, was aware of the "quo animo" with which his father's will was formed, else if a contrary opinion be maintained, it would be allowing the son (the devisee in fee) the power of devising an estate, in which at the moment of his death he had not the shadow of an interest of any kind, seeing that the devisor (his father) was actually living. And most of your readers must doubtless be aware that "nemo est heres viventis."

G. D.

every renumeratior; and that the saving clause of the table does not help the claim of poundage, it not being for a duty; and that accidental omission of so important a charge as poundage, in a table which would naturally be looked to as a perfect guide in all common cases, is improbable.

For the claim, a duty may perhaps be attempted to be shewn, on which to found the claim of poundage; and of course, *Davies v. Griffiths* will be cited to shew that the act did not intend to meddle with poundage.

On the whole, I am by no means convinced of the legality of poundage; but leaving the question of legality, we come to what must and ought to be the ultimate question. Do the sheriff and his officers receive more than a proper remuneration? if not, (tho' an addendum to the table would in that case appear desirable) let us rest satisfied with the decision; if they do, then (whether the charge of poundage be legal or illegal) by all means let "A Country Attorney," and others competent to judge, use their efforts to obtain a reduction.

F. W. D.

Sir,

It gives me great satisfaction observing the letters of your correspondents on this subject, and inasmuch as I entirely agree with them, as to the injustice, not to say illegality, of such a charge as that set up by the sheriffs for executing a *ca. sa.*; for doing which their officers are paid a caption fee, (which in itself is quite sufficient) but they must add a charge for poundage, which is, as I shall be able to shew, wholly illegal according to the 1 Vic. c. 55, ss. 2 & 3, which enacts "that it shall be lawful for sheriffs or their officers to receive such fees, and no more, as shall be allowed by any taxing officer of the Courts of Law at Westminster, under the sanction and authority of the said Courts respectively;" and then it goes on to say "that sheriffs or their officers taking fees not allowed, or greater fees than are allowed, shall be guilty of a contempt, and shall be punished accordingly."

Now Sir, upon reading this, every lawyer must clearly see that the charges of the sheriff for executing a *ca. sa.* are to be at fixed rates, or such charges as a Master shall allow on taxation; and Sir, I would ask is there to be found any such charge as that of poundage on a *ca. sa.* in any rule or order of a court or judge? I submit not; neither is it allowed on taxation, for the best of reasons; because the charges for an execution are not included in a bill of costs at all, they being in the case of a *fr. sa.* levied by the sheriff on the property of the debtor; in that of a *ca. sa.* the debtor should pay, and not the creditor, who of all parties concerned should be entirely exonerated, but who alas, is too often saddled with this said poundage, because, forsooth, it is customary that he should pay it.

However, Sir, the profession have the remedy in their own hands, by refusing to pay it. If such a claim were attempted to be enforced, it would, I am assured, utterly fail. J. A.

## ON THE LEGALITY OF SHERIFFS' POUNDAGE.

Sir,

As the letter of "Another Country Attorney," in your number for the 14th December, seems to call for the expression of my assent or dissent, I trouble you once more.

The decision in *Davies v. Griffiths* is certainly quite against my former view; but, I cannot help still entertaining some doubt, and own I am not convinced by the observations of the judges, as reported, 4 Mees. & Welsby 377.

Against the claim of poundage it may be urged: that the "N. B." to the table informing sheriffs that by the act they are punishable for contempt if they "extort, demand, take, accept or receive any fee, gratuity, or reward not hereby (by the table) allowed," clearly shews that the judges' intention was to provide

**QUESTIONS  
AT THE EXAMINATION.**

*Hilary Term, 1840.*

**I. PRELIMINARY.**

Where did you serve your clerkship?  
State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.  
Mention some of the principal law books you have read and studied.

**II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.**

Can the judges amend defects in records after judgment given? if so, how must it be done?  
In what cases may the judge certify to deprive the plaintiff of costs, and when and how must his certificate be obtained?  
If one of several defendants, who defended jointly, be acquitted, will he now, as formerly, be restricted to forty shillings only for his costs, or in what proportion will he be entitled?  
In what cases may a defendant be now held to bail? and how must you proceed?  
If a feme sole obtain judgment and marry before execution, what must be done in order to execute the judgment?  
Where an infant joins an adult in a warrant of attorney, is it wholly void, or to what extent?  
Has a copyhold tenant of a manor a right to an unqualified inspection of the court rolls and books of the manor? and if so, before or pending action?  
In what cases may cattle be impounded? and if impounded for an excessive sum, what are the remedies? and against the party impounding, or against the pound-keeper?  
Will a tender be good if clogged with any and what conditions?  
State some of the nuisances affecting dwelling houses and lands for which an action will lie.  
State the instances (if any) in which a carrier is not liable for the loss of goods intrusted to him?  
Is a tenant liable to pay the rent of premises accidentally destroyed by fire, under any and what circumstances?  
May the owner of a horse which was stolen from him retake it in any and what place?  
When is a master answerable for damage done by his servant, and when not?

Where a landlord grants a mortgage, and afterwards lets the premises by lease or at will, can the mortgagee distrain for rent if the tenant has not attorned to him, or what remedy has he against the tenant? and would the remedy be the same if a lease had been granted of the premises before the mortgage? and if not, what would be the difference?

**III. CONVEYANCING.**

What are the denominations of the several parts of a deed of conveyance by release? and state the form to prevent dower?  
What are the usual covenants for title entered into by a vendor in his conveyance to a purchaser of a fee simple estate?  
What is the difference between an estate in fee simple, and an estate in tail general?  
How far back has a purchaser of land a right to require the title thereto to commence?  
Is it customary for the vendor or the purchaser to bear the expence of preparing the abstract of the title to the estate to be conveyed? and which, according to custom, bears the expence of the conveyance?  
What is the difference between a freehold and a copyhold estate?  
If a copyhold estate is to be the subject of a conveyance, by what means is it usually conveyed?  
What is the meaning of an assignment of a term to attend the inheritance?  
If an outstanding term has never been assigned to attend the inheritance, at whose expence is such assignment to be made?  
In what respect does an estate limited to joint tenants in fee, and tenants in common in fee, differ?  
In what respect does an incorporeal hereditament differ from a corporeal hereditament?  
Who are incapable of making a will?  
What are the requisites to be attended to in the execution of a will under the recent Statute of Wills?  
If a person die intestate, leaving a widow, one child, three children of a deceased child, and a brother and sister, in what manner would the intestate's personal estate be distributable?  
Should the direction to sell an estate be absolute or discretionary, in order to constitute an equitable conversion of the freehold into personality?

**IV. EQUITY AND PRACTICE OF THE COURTS.**

Through the intervention of what person must an infant sue in a Court of Equity?

Can or cannot a bill be filed on behalf of an infant without his consent?

If a suit be instituted on behalf of an infant which is considered to be injurious to his interests, in what way will the Court, on a representation to that effect being made, proceed in order to ascertain whether it be well or ill founded? and if the former, what course will it adopt?

If a bill be filed on behalf of a married woman against her husband without her consent, will this circumstance, on its being made out to the satisfaction of the Court, involve any, and if any, what consequences?

If a bill be filed by a man and his wife touching the personal property of the wife, and the husband die pending the suit, does or does not that circumstance cause an abatement of the suit?

Is the objection for want of parties to a bill taken in the same manner, where such objection appears on the face of the bill itself, as where it does not so appear? If different, then state what are the proper modes of objection applicable to each of these two cases.

Where a cause has proceeded to a hearing, and is then ascertained to be defective for want of parties, does or does not that circumstance form a ground for a dismissal of the bill, or will the Court adopt any other, and if so, what course in consequence of such defect?

Is there or is there not any, and if any, what circumstance appearing on a defendant's answer, which will prevent a plaintiff from proving a deed *vivid voce* at the hearing of a cause?

In a suit for a specific performance of a contract for the sale of an estate, is it competent to either the vendor or the purchaser to obtain a reference to the Master as to the title, or can this be done by one only, and which of such contracting parties?

Can or cannot an infant maintain a suit for the specific performance of a contract? And give the reason for your opinion, whatever it may be.

Where a submission to reference has been made a rule of a court of common law, has or has not a court of equity jurisdiction to afford relief against the award which has been made in pursuance of such submission?

In a suit in Equity by an incumbrancer against a purchaser for valuable consideration, in which such purchaser is sought to be affected with notice of the incum-

brance, and in which such notice is proved by one witness only, but is positively and expressly denied by the answer; in whose favour will the Court decree?

Are there any circumstances under which an agreement for a lease for twenty-one years, not made in writing, would be enforced by a Court of Equity? if so, state those circumstances, and on what grounds such an equity would prevail.

At what period after a mortgagee has taken possession of the mortgaged estate, and under what circumstances, is the mortgagor barred of his right to redeem the estate?

A testator, by his will, having given a pecuniary legacy to A., is induced, when in a state of great mental and bodily weakness, and through the fraud, influence, and circumvention of B., to revoke the legacy, and by a codicil to his will to give it to B. himself. Is or is not this a case in which, after the testator's death, and assuming that the facts above stated could be clearly established, you would advise A. to have recourse to a Court of Equity against B.? If yea, state the relief that you would seek to obtain for A. If no, give the reasons for your not recommending the suit.

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

What are the facts necessary to be stated in the petitioning creditor's affidavit of debt to strike the docket?

State the most usual acts of bankruptcy.

Within what time must a town fiat be prosecuted? and within what time must a country fiat be prosecuted?

Does a fiat abate at any, and what time, by the death of the party against whom it has issued?

Can a creditor, having a security for his debt by way of mortgage, be a petitioning creditor?

For what purposes may joint creditors of a firm prove under a fiat against one of the firm.

Can a creditor, holding a joint and separate security (such as a bond or note), prove his debt under both the joint and separate estates, or must he elect?

If the funds under a fiat are insufficient to pay the expences, are the creditors, who have proved liable to contribute, or must the assignees bear the loss?

What amount of debt proved entitles a

- creditor to vote in the choice of assignees? and what amount entitles a creditor to sign the certificate of conformity?
- If the certificate be signed by a sufficient number of creditors in amount and value, have the commissioners a discretionary power to refuse the certificate?
- What is the course to be taken by creditors to expunge an improper proof of debt under a fiat?
- Has the landlord any and what priority for rent in cases of bankruptcy?
- If, after adjudication, the petitioning creditor's debt should be found insufficient, can any and what course be taken to remedy the defect?
- What proceeding must be taken by a creditor to enforce payment of his dividend?
- Under any and what circumstances do goods and chattels of which the bankrupt has the possession, but of which he is not the owner, pass to his assignees?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

- What is a constructive taking, in larceny? In an indictment, or in a summary proceeding for a malicious injury to property, is malice against the owner essential?
- When is a prisoner said (legally speaking) to stand mute?
- What offence is the advising a prisoner to stand mute, and how is it punishable?
- Who is an accessory before the fact?
- Who is an accessory after the fact?
- Are there any crimes in which there cannot be accessories before the fact? If any, give examples.
- Are there any crimes in which there cannot be accessories either before or after the fact? if any, give examples.
- If the verdict of a coroner's jury be "wilful murder," and the grand jury, upon a bill of indictment for wilful murder being preferred, find a true bill for "manslaughter" only, how must the prisoner be arraigned and put upon his trial?
- What number of peremptory challenges of jurors is a prisoner entitled to on his trial for high treason? and what number on his trial for murder or felony?
- Is there any limit to challenges for cause or reason assigned?
- Is an alien indicted for a felony entitled, on application to the Court, to have aliens on the jury by whom he is to be tried? If so, how many?
- Under what circumstances are justices of the peace required to admit to bail a person charged with felony?

Under what circumstances are justices required to commit a person so charged? May the Court of Queen's Bench, or a Judge in vacation, admit a prisoner to bail in any, and what cases?

#### SELECTIONS FROM CORRESPONDENCE.

##### PRELIMINARY EXAMINATION OF ARTICLED CLERKS.

To the Editor of the Legal Observer.

Sir,

THERE is no subject upon which the public is so well agreed as the necessity of keeping up the respectability of the members of the legal profession, and more especially that of the attorneys; for this purpose many rules have been made and taxes imposed without entirely producing the desired effect.

It strikes me that the following rule, if rightly acted upon, would not only speedily decrease the number, but increase the respectability of that branch of the profession—viz. that every person before he is articled should be compelled to pass an examination in the following or some similar branch of education, say, Caesar's Commentaries, Virgil, Xenophon, and the first three books of Euclid, and a proportionate quantity of Algebra: all this any person of ordinary capacity can attain at the common grammar schools, before he arrives at the age of sixteen. A certain attendance at the college in Edinburgh is required to enable a person to become a writer to the signet. The Society of the Inner Temple require an examination something like this.

My attention has been often, but more particularly called to this subject within the last twelve months, by several instances of disreputable conduct on the part of attorneys; and it is remarkable that none of them would have been in the profession if the rule above mentioned had been made a dozen years ago.

I trust that some of your numerous readers will take the matter up, and get some such measure carried into effect.

AN OLD SUBSCRIBER.

##### NON-PAYMENT OF COUNTRY AGENTS.

Mr. Editor,

I beg to draw your attention to what appears to me to be a crying evil, viz. the practice which some London attorneys adopt of employing a country agent to serve process in an action, and then neglecting and refusing to pay his fees. I know of three cases in which one person has received this treatment; and I should feel extremely obliged if any of your numerous correspondents could point out his remedy, as, notwithstanding I have made diligent search, I cannot find any rule on the subject, although there certainly should be one according to the well known maxim "that there is no wrong without a remedy."

A CONSTANT READER.

## LIABILITY FOR BROKEN WINDOWS.

Sir,

A few days ago my attention was drawn to the following case, which many gentlemen of the legal profession have not been able to answer:—"A person, whilst walking in a street, accidentally broke a very large square of plate glass in a shop window, value twenty guineas. He tendered 3s. 6d., the price of an ordinary sized square of common glass, which sum the shopkeeper refused to accept, and has threatened proceedings against the person to recover the full value." Can any of your readers inform me whether, under these circumstances, a person is obliged to pay more than sufficient to replace an ordinary sized square of glass.

E.

## COURT OF REQUESTS.—SUGGESTION.

Sir,

I beg to call your attention to the report of the case of *Jackson v. Clother*, pp. 78 & 79 of your work, in which I think there must be some error. The question in dispute was whether a defendant was entitled to his costs on the plaintiff taking a less sum than 40s. out of court, where the defendant resided within the jurisdiction of a court of requests; and Mr. Baron Alderson is made to say, "the defendant should therefore have pleaded that he resided within the City of Gloucester, and that he was not indebted to the plaintiff in the amount of 40s.

Now, it appears to me, that your reporter must have mistaken the words of that learned Judge, it having been decided in several cases that the objection is not to be taken by plea, but by a suggestion; and therefore the proper course would have been for the defendant to have pleaded merely that he was not indebted; and unless upon the trial the plaintiff had obtained a verdict for 40s. and upwards, a suggestion might have been entered to deprive the plaintiff of his costs.

W. S.

## LAW OF ATTORNEYS.

Sir,

*A.* and *B.* are in partnership as attorneys; *A.* is admitted an attorney of the Common Pleas, *B.* not. They were employed by a client to defend an action brought against him in the Common Pleas in 1834. During the progress of the defence, *B.* was admitted an attorney of that Court.

Can *A.* and *B.*, in an action brought against them by the client for money had and received, set off the whole of their bill of costs incurred, when *B.* was not admitted an attorney of the Common Pleas, or only so much as was done after *B.* was admitted an attorney of that Court? See *Latham v. Hyde*, 1 C. & M. 128; 1 Dowl. P. C. 594.

T. P.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## DEVISE.—ALIEN.—RIGHT OF THE CROWN.

A devise of lands to English subjects, in trust to sell and invest the proceeds in the public funds, in trust for persons, some of whom were aliens: Held upon a bill, to which the Attorney General was a party, that the crown had no right as against the aliens over the lands or the proceeds of the sale of them.

Mrs. Elizabeth Sheldon, who died in 1829, by her will, dated Oct. 1824, appointed real estate, over which she had power of appointment, to trustees for ever, upon trust to sell the same absolutely; and she directed that they should stand possessed of the monies to arise from such sale, upon trust, after payment of expenses and mortgages affecting the estate, to invest the residue in the public funds or real securities, and to stand possessed of such funds and securities, as to one sixth part thereof, in trust to pay the interest and annual produce thereof to the testatrix's daughter, Mrs. Caroline Weston, for her separate use, during her life, remainder to her children then born, or thereafter to be born by her then husband John W. Weston, or any future husband, in such shares and at such times as in the will mentioned. The testatrix directed the trustees to stand possessed of the other five sixth parts of the said funds for each of her other five daughters and their children in like manner. Four of the daughters were married to aliens, and some had children, who were aliens. One of the daughters was unmarried. The will further provided that in the event of any of the six daughters dying without leaving issue, who should live to acquire vested interests, the husband of such daughter should enjoy a life interest in his wife's share, with right of survivorship, and if all the daughters should die without leaving such issue as aforesaid, there was an ultimate trust for English subjects. The bill was filed in 1832, by the Count De Hourmelin, husband of one of the daughters, and his wife and their child, and by the unmarried daughter, against the trustees, for carrying the trusts of the will into execution; and by a decree made therein in 1835, the estate was ordered to be sold. Lord Radnor bid 13,400*l.* and he was declared the purchaser. He paid the money into Court, and took exceptions to the master's report, finding that a good title could be made to the estate. The ground of the exceptions was that the will attempted to give interests in lands in this country to aliens, the husbands and children of the testatrix's daughters; and that such interests could not be held against the crown or transmitted to a purchaser by the trustees under the will. The exceptions were argued before the Master of the Rolls, and they were over-ruled by his Lordship.<sup>a</sup> Lord Radnor appealed.

<sup>a</sup> 1 Bevan, 79.

The *Solicitor General* and *Mr. Elderton* for the appellant relied on Sir John Leach's decision in the case of *Fourdrin v. Gowdey*,<sup>b</sup> and on the construction which has been uniformly put on the statute of Mortmain, viz. that all money to be raised by charging or by selling land for charitable uses is within the prohibition of that statute as much as the land itself. They submitted that the Attorney General ought to be made a party on behalf of the crown, so that the crown might be bound by any decree to be made.

*Mr. Wigram* and several other counsel for the several parties to the suit.—None of the persons beneficially entitled under the devise took any interest in land; they were entitled only to certain shares of a fund constituted by the monies arising out of the absolute sale of the land. If it were true that an alien cou'd take no interest in the produce of land after a conversion out and out, as was contended on the other side, then no foreign creditor could enforce payment of his debt against the lands of a merchant in this country, and no merchant could effectually execute a deed of trust of his lands in England for the benefit of his creditors, if they or some of them should happen to be foreigners. Such a doctrine, if true, would put an end to all trade and commerce with foreigners. It would be very inconvenient to make the Attorney General a party, unless the Court required it. The principle of the Mortmain Acts did not apply to this case, neither did the decision in *Fourdrin v. Gowdey*, the circumstances of which case were widely different, for in that case there was no conversion out and out, and there was an option for the legatee to take the land or the proceeds of it. But here the trustees, English subjects, are to sell the land and give receipts for the price. The legatees take legacies in personality only, and the aliens may never take any shares, the immediate legatees being all English subjects.

The arguments on both sides went to a great length. They did not differ materially from those reported 1 *Beauv.*, 82 to 89. The case of *Roper v. Radcliffe*,<sup>c</sup> not there mentioned, was cited for the appellant, to show that on the construction of the act 11 & 12 W. 3, disabling papists from taking lands by descent or purchase, the judges held that they would not take lands by devise, nor the residue of the proceeds of lands devised to be sold to pay debts. That was analogous to the construction of the Mortmain acts.

The *Lord Chancellor*.—Lord Radnor is stated to be a willing purchaser, and to have no wish to get rid of the contract; the vendees are willing to abide by it, and the devisees desire the performance of it. Under these circumstances, would it not be easy to make the Attorney General a defendant, to represent and bind the rights of the crown? The point for my consideration is whether the question of title is so free from doubt that I will decree specific performance. The result of my judgment may be to rescind the contract alto-

gether, and not decide anything on the expediency of making the Attorney General a party. My judgment may be confined to the rights of the parties to the contract to a specific performance of it.

The plaintiffs, in consequence of these suggestions, made the Attorney General a party defendant by supplemental bill; and they intimated the same to the Lord Chancellor, but there was no further argument.

His Lordship, after taking time to consider the case, began his judgment by saying, the persons claiming to be entitled to the legacies had properly consented to make the Attorney General a party to the suit. The question now for him, was whether the crown had any right over this property, and his opinion was that it had no right. Without giving any opinion on the principle of Sir John Leach's decision in *Fourdrin v. Gowdey*, he would state that case. His Lordship stated the main facts of it, and the judgment, from the report, and said, whether the grounds of the decision there were right or not, the circumstances were different from the present case; here the testatrix directed a conversion of the estate out and out, by the trustees. If the purchase was to be made from the trustees, as the will directed, the crown would be excluded. If the crown were to be held entitled to this money produced by the sale of the land, by the trustees, it must be entitled to all legacies and debts due to foreigners; if the fund to satisfy them is to be raised out of the produce of lands; and it would follow as a necessary consequence, that no debtor, (whether trader or not,) could secure payment of his debts out of his real estates, if any of his creditors should happen to be foreigners. And no foreigner could enforce a claim against his English debtor if the latter had no other property than real estate. The testatrix here gave no option to the legatees to take the land. If she had, the legatees, the aliens, could not enjoy it. The case of *Roper v. Radcliffe* did not apply, although it came the nearest to this case. Being of opinion that the crown had no right or authority over this property, he did not conceive that there was any occasion to refer to the judgment of the Master of the Rolls. The question before the Court raised by the supplemental bill was whether the crown was entitled. That question being disposed of, the supplemental suit was at an end. The executors' costs in that suit ought to be provided for out of the shares of the aliens for whose protection the point was raised. The question being between them and the Attorney General, the general estate ought not to be subject to the costs by particular legatees. As it appeared that the Court below objected to the sale of the estate until the Attorney General was made a party, his costs of the appearance in the supplemental suit ought to come out of the general estate.

*De Hourmein v. Sheldon*, at Westminster, May 28 and 29, and Nov. 6, 1839.

<sup>b</sup> 3 Myl. & K. 383.

<sup>c</sup> 9 Mod. 167.

## Queen's Bench.

[Before the Four Judges.]

## POOR-RATE.—OCCUPATION.

A building erected under a local act of parliament was vested in the county justices, who held sessions and transacted the county business there. Some of the rooms were fitted up as bed rooms. A certain quantity of plate was bought by the county and kept in this building for the use of the judges at the assizes. Some of the justices subscribed for a quantity of wine, which was kept in the cellars of the building, and was used by the justices when attending at sessions. A person was always resident in the building, and took care of the wine and plate. Held, that these circumstances did not constitute such an occupation by the county justices as to make the whole body liable to be rated to the relief of the poor.

In this case the question intended to be submitted to the Court was, whether the justices of Worcestershire were liable to be rated in respect of an alleged occupation of a building in the city of Worcester. The building in question was that where the magistrates met to hold the sessions for the county, and in which the judges' lodgings were situated. A rate had been imposed on this building, and there was an appeal against it, on the ground that the building was one which was occupied solely for public purposes. In answer to this objection, it was stated that there were beds in some of the rooms, in which any of the magistrates could sleep; that some of them occasionally did so; that there was a stock of wine in the cellar, and that there was a quantity of plate for the use of the magistrates when they thought fit to dine in the house at the time of the sessions; that the plate had been bought by the county, but that the wine was purchased by a subscription among the magistrates; and that there was a person resident on the premises to take care of the plate and the wine.

Mr. Whately and Mr. Whitmore, in support of the rate. The building here is occupied by the justices. They have plate and wine within the house, and there are bed rooms fitted up for their use, so that there is in every respect a beneficial occupation by them. [Lord Denman, C. J.—And who are the parties sought to be charged with this liability; the justices of the county at large?] Yes; they reap the benefit, and they must bear the burden. [Mr. Justice Coleridge.—What, the justices for the time being?] Yes; for all of them have the right to sleep in the building, and their common stock of wine is there. The wine is paid for by subscription among the magistrates—there is a sort of head money payable by each magistrate on his admission. The building is altogether under the control of the magistrates, who may use it, not only at sessions, but at the races and the music meetings. The *King v. Green*<sup>a</sup> decided that the objects of a charity,

in actual occupation of almshouses, paying no rent for the same, and removable at the pleasure of the patrons of the charity, were rateable to the poor in respect of such occupation. It is clear from the well-known cases of the occupation of barracks by an officer that a public building may be rendered rateable from the use made of it by an individual. So may the workhouse of one parish, situate within the boundaries of another; *Bristol Poor v. Waite*.<sup>b</sup> Even the guardians of a poor law union may be rateable in a particular parish, in respect of the union workhouse, though the parish in which they are rated is one of the parishes of the union. *The Queen v. The Wallingford Union*.<sup>c</sup> The occupation of the cellarage here constitutes an occupation pervading the whole of the year, and that occupation by their servant and with their property is an occupation for their private convenience. There is no difficulty in enforcing a rate like the present. For such a purpose the local act of parliament under which the building was erected, and which has vested in them the legal estate in it, has made them a *quasi corporation*, for the purpose of holding such estate. Though, therefore, all the magistrates may not in fact occupy the building, all are rateable, and there will be no more difficulty in enforcing the rate than there would be in enforcing a rate upon a club-house where all the members were not in actual occupation of the club. [Mr. Justice Coleridge.—By the act of parliament they are only governors of the building for a public purpose.] But as they do not want it for that purpose but at stated intervals, they might let it for the intervening periods, and if so, it would be clearly rateable. So it is, though used by them for their private purposes, instead of being let to a third person. [Lord Denman, C. J.—It is not clear that the wine is paid for by all the magistrates; it is stated in the case that there is a subscription among the magistrates.] That is, among all, not among some of them.

Mr. Richards, and Mr. W. Alexander, concur. The rate is bad both in form and substance; there is not a pretence for saying that there is any occupation but for public purposes. In the first place, the rate is made upon the whole of the building; now it is clear, that if the having the wine in the cellar, and some of the rooms fitted up as bed rooms, constituted a beneficial occupation, it would only be a beneficial occupation of part of the house. In form, therefore, the rate is clearly bad, and it is bad in substance, for the building is vested in the magistrates for public purposes only, and they have no other occupation of it. The wine is only kept there for the occasional refreshment of such magistrates as may come from a great distance to transact the county business. There is no mode by which a rate could be properly imposed or levied in this case, which does not in any way resemble the case of a club-house. A club is

<sup>b</sup> 2 Har. & Woll. 70; 2 Adol. & El. 1.<sup>c</sup> 2 Q. B. Trin. Term, 1839.

rated through its secretary, and the property in his possession would be liable to be taken for the rate. But here the magistrates have no secretary; they have no occupation, and they have no property. The wine belongs to a few of the magistrates, not to the whole body, and the plate is the property of the county, provided by the county for the use of the judges at the assizes. If the magistrates can be rated at all, it must be as a corporation, but the local act merely makes them a corporation for public purposes, and for no other. There is no doubt that if there is a beneficial occupation, there must be a liability to rating, and that was the case with the Wallingford Union, but here there is no such occupation, and consequently no such liability.

*Lord Denman.*—In my opinion, this property is not rateable. It cannot be said that the whole body of justices holds a beneficial occupation of these premises. The buildings were erected for certain public purposes, but it is said that the magistrates have a beneficial occupation of the premises, such as brings them within the liability to rating. It appears that some of the magistrates do that which may give rise to that argument; in their case, however, such an occupation is not clearly made out; but at all events, that will not make the whole body of the magistrates liable. The building is a building for public purposes, and was not therefore rateable.

*Mr. Justice Patteson.*—This building was erected under the authority of a local act of parliament, and by that alone do the magistrates hold it; so far as they pursue that act in dealing with the building, it cannot be rateable, for it is erected for public purposes only. If any individual held it for a private purpose, he would be rateable in respect of such holding. But how is that to make all the justices of the county rateable?

*Mr. Justice Williams.*—I am of the same opinion. It is said here that there is something beyond the purpose of a public occupation, and cases have been referred to for the purpose of shewing, that when a building, erected for a public purpose, is converted to a private use, it is rateable. Of that there is no doubt, but on the other hand, such an occupation is not proved. The strongest statement of a beneficial occupation, is that of an occupation by a few magistrates, at intervals, when called thither by county business. How can that be said to be the act of the whole body, or to make all the magistrates of the county rateable?

*Mr. Justice Coleridge.*—The legal estate in this building is no doubt in the magistrates of the county, for public purposes only. In respect of such an estate there can be no rating. But then it is said, there is a beneficial occupation by them. In what respect? The case only raises the appearance of such an occupation in certain individuals of the body. That cannot make the whole body rateable.

Judgment for the appellant against the rate.—*The Queen v. The Justices of Worcestershire*, M. T. 1839. Q. B. F. J.

### Queen's Bench Practice Court.

#### WRIT OF TRIAL.—SHERIFF'S NOTES.—COUNSEL.

Where counsel have been employed at the trial of an issue before the sheriff, on a writ of trial, the Court will receive from him a statement of what took place at the trial, without a verified copy of the sheriff's notes, where a motion is made for a new trial.

Bere applied for a rule to shew cause why a new trial should not be granted, and also the damages found be reduced. He had not a copy of the sheriff's notes, but was employed as counsel in the cause, which was tried at Wells. The action was brought by a common farrier, the amount sued for being 9*l.* 10*s.*, charged for various items, some of which were proved in Court, but others not; the jury found a verdict for the full amount charged on the various items.

*Patteson, J.*—As you were counsel in the cause, I can take the facts from you, without a verified copy of the sheriff's notes.

Rule granted.—*Flower v. Adams*, H. T. 1840. Q. B. P. C.

#### DISTRINGAS.—APPEARANCE.—AFFIDAVIT.

Where the affidavit is regular with respect to attempts to serve a writ of summons, to which an appearance has not been entered by the defendant in due time, and a search for an appearance has been made on Saturday, a rule for a distringas may be obtained on the Monday following.

This was an application for a distringas. The usual affidavit was produced, shewing that three calls had been made; that the two last had been pursuant to appointments, stating the hour; that the copy of the writ of summons had been left at the third call; that the defendant, it was believed, was keeping out of the way to avoid being served: that the time for appearance was out on Friday, and a search made at the proper office on Saturday, when no appearance had been entered by the defendant.

Tedall now (on Monday) moved for leave to issue a distringas. Search had been made on a day subsequent to the expiration of the period limited for the defendant's appearance, and the fact of the motion not being made until the Monday afterwards could not be any objection.

*Patteson, J.*—You may take your rule.

Rule granted.—*Spence v. Barker*, H. T. 1840. Q. B. P. C.

#### CLERGYMAN.—CHARGING BENEFICE.—AFFIDAVIT.

In order to ascertain whether a warrant of attorney can be considered as a charge of a benefice, within the 13 Eliz. c. 20, s. 1, the Court will not read affidavits to shew the intention of the parties independent of the instrument.

This was a rule nisi obtained for setting aside a warrant of attorney, and the judgment

and sequestration signed and issued thereon, on the ground that it operated as a charge on a benefice contrary to the 13 Eliz. c. 20, s. 1. It appeared by affidavit that a warrant of attorney, dated 24th of June 1831, was executed, on which was an indorsement of a defeasance in the following terms: "Be it remembered, that the within warrant of attorney is given and executed, and judgment is intended to be entered up by virtue thereof, for further and better securing unto the within named Samuel Wreford, his executors, administrators, and assigns, the due and punctual payment of 2,000*l.* with interest for the same after the rate of 5*l.* for every 100*l.* for a year, which by an indenture of demise, bearing even date with the said warrant of attorney, and made, or expressed to be made, between the within named Henry Hatch of the one part and the said Samuel Wreford of the other part, is secured to be paid by the said Henry Hatch, his heirs, executors, and administrators, to me the said Samuel Wreford, my executors, administrators, and assigns, at the time and in the manner therein agreed upon, but no execution is to be taken out upon the said judgment until the 24th June, which will be in the year 1832, or unless the said Henry Hatch shall, before that time, make default in payment of the interest of the said sum of 2,000*l.*, or shall then make default in payment of the said principal money, interest, premium, and expences, due and owing from the said Henry Hatch to the said Samuel Wreford, his executors, administrators, or assigns or some part thereof: of which default, the production of these presents by the said Samuel Wreford, his executors, administrators, or assigns, shall be full and conclusive evidence to all persons whom it may concern; as witness the hands of the within named parties, the day and year within written.

"Henry Hatch, Samuel Wreford.

"Witness, G. Tanner, William B. Moore."

The indenture referred to in the warrant of attorney, recited that Henry Hatch then stood indebted to Samuel Wreford in the principal sum of 1,400*l.*, and having occasion to borrow the further sum of 600*l.*, he applied to the said Samuel Wreford to lend him the same, which the latter consented to do upon having the repayment of the said sums of 1,400*l.* and 600*l.*, making together the sum of 2,000*l.*, secured with interest for the same, after the rate of 5*l.* for every 100*l.* for a year, in manner therein mentioned; and also by the said Henry Hatch entering into a covenant for insuring his life in the sum of 2,000*l.* in manner therein mentioned.

*Kelly and Lee obtained the rule.*

*Bull* shewed cause against the rule, and submitted that no charge on the benefice could be created by anything that appeared on the face of the warrant of attorney and defeasance; and the opposite party is precluded from resorting to affidavits to prove in fact that a charge was intended to have been created by the parties.

*Coleridge, J.* was of opinion that he had no power to examine affidavits, in order to discover the real intentions of the parties, independent of what appears on the face of the instrument.

Rule discharged.—*Bishop v. Hatch, M. T.* 1839. Q. B. P. C.

#### JUDGMENT ON DEMURRER.

*Judgment having passed for the plaintiff on a demurrer to one plea, and the cause being taken down for trial upon another plea, when a juror was withdrawn by consent, the Court refused to give the plaintiff the costs of his demurrer.*

*Bingham* moved for a rule calling upon the defendant to shew cause why the plaintiff should not be at liberty to enter up judgment in the action so as to obtain the costs of a demurrer decided in his favor. The action was brought with two others of similar character against the defendant, who was a commissioner of the town of Weymouth, under these circumstances: A contract was entered into by the plaintiff with the defendant for the supply of gas to the town of Weymouth. The defendant was dissatisfied with the quantity of gas supplied, and he therefore turned the cocks of the pipes, by means of which an increased quantity was consumed. Actions were on this brought by the plaintiff, who declared in trespass for seizing the pipes and turning on the gas. The defendant pleaded first, not guilty, and secondly, a justification. To the latter plea the plaintiff demurred, and upon argument the demurrer was allowed. The pleadings and proceedings were similar in all these actions. The plaintiff took down all the actions to the assizes for the purpose of trying them, and when the first cause had been partly heard, as it appeared there was no answer on the merits, the jury found for the plaintiff with 40*s.* damages. The learned judge thought that one action was enough for such a cause, and recommended that in the other cases a juror should be withdrawn. This was accordingly done, but nothing was said on the subject of the costs of the demurrs. It was submitted that the plaintiff was entitled to those costs, and that a *remititur causa* might be entered or a special *nolle prosequi*.

*Burston* showed cause in the first instance, and urged that the course suggested was unwarranted by the rule of law and the practice of the Court. When a juror was withdrawn, the cause was not terminated, and it might be again taken down for trial. The merits of the present case had not been decided, and as the judgment on demurrer was only interlocutory, it was not even proved that the plaintiff had any cause of action.

*Cur. adv. vult.*

*Coleridge, J.*—The application in this case was to enter up judgment, so as to enable the plaintiff to obtain his costs of the demurrs in this and two other actions. It appears that three actions were brought against the defendant and two other persons, for taking some

gas belonging to the company represented by the plaintiff. The defendants in the action thought that the town was not sufficiently lighted, and, therefore, without authority, turned on an additional supply of gas. A plea of justification, founded on this opinion, was pleaded in each of the actions. To this there was a demurrer. It came on for argument, and was decided in favour of the plaintiff. After that he took the three actions down for trial. One was tried, and a verdict found in favour of the plaintiff for 40s. It appears that the judge who tried this cause, was of opinion, that to bring three actions for such conduct on the part of the defendants was rather a vexatious proceeding, and that now, as a verdict had been obtained in one, the other actions should be withdrawn. This suggestion was complied with, but no arrangement was made by the counsel or the attorneys, as to the costs of the demurrs. It was taken, rather, that the costs of the demurrs were intended to be waived. The application now is, to enter up judgment, so as to give the plaintiff the costs of those demurrs. Now the parties having withdrawn a juror, it is the same as if no trial at all had taken place. Either the plaintiff or the defendant may go down to trial again. If the defendant should succeed at the trial, on the issues in fact, raised on this record, he would have the costs of those issues to set off against the costs of the demurrer. I, therefore, cannot grant a rule for the purpose suggested, without the consent of the defendant. It appears that he refuses to consent, and, therefore, I cannot grant the rule at all.

Rule refused.—*Burdon v. Flower*, M. T. 1839. Q. B. P. C.

#### Exchequer of Pleas.

##### SECURITY FOR COSTS.—LACHES.—PO- REIGNER.—ENGLISHMAN.

*It is no objection to an application for security for costs on the ground of a plaintiff being abroad, that the defendant has obtained time to plead on the usual terms.*

*It is an objection to such an application that the plaintiff is resident in this country at the time of the application being made, although he is usually resident abroad.*

Hoggins obtained a rule *nisi* for security for costs to be given by the plaintiff, on the ground of his being resident abroad.

Ball shewed cause against the rule. It appeared by the affidavit, that the action was commenced on the 12th December 1839, and an appearance only entered. The plaintiff declared on the 4th January; on the 8th of that month a judge's order was obtained at the instance of the defendant, for seven day's time to plead; defendant submitting to the usual terms of taking short notice of trial for the sittings after Hilary Term. It appeared by the affidavit of the plaintiff's attorney, that his client was an Englishman, and was very generally in France, but was at present in England, although he was out of England when the action was begun. His client was now at Man-

chester, and had not yet returned, but was expected soon to return.

Ball submitted that the first objection which was available against this application, was that the defendant was too late in making it. After obtaining time to plead, he submitting to accept short notice of trial at the sittings after Hilary Term, the defendant ought not, and could not, successfully make this application. The rule of Court allowed the application to be made in general at any time before issue joined; but this was not an ordinary case. The Court would not under such circumstances, allow the defendant to succeed. A second objection might be taken, which was that as the plaintiff was now actually in England, although absent from this country at the commencement of the action, and most usually resident in France, the Court would not be inclined to allow the rule to be made absolute.

Hoggins, in support of the rule, contended that as the general rule of Court was that this application might be made at any time before issue was joined, and as no issue was joined in the present case, the application was in due time. As to the second objection, that the plaintiff was at the time of the application being made in this country, that was no answer, as he was usually residing in France, although occasionally visiting this country. Under these circumstances, the present rule ought to be made absolute.

Parke, B. was of opinion, that the general rule was, that the application must be made before issue joined in "ordinary cases." These words must be considered as applicable to instances where knowledge of the plaintiff being out of the country had not reached the defendant in sufficient time to make such an application in due time according to the general rule. The fact of obtaining time to plead on the usual terms, was no objection to the present rule. As, however, it appeared that the plaintiff was in this country at present, the application could not be supported. The rule must therefore be discharged.

Rule discharged.—*Dowling v. Harman and another*, H. T. 1840. Exchq.

#### THE EDITOR'S LETTER BOX.

We are glad to find that the transmission of the Legal Observer by the post is deemed convenient to several Country subscribers. The plan adopted enables them to receive it with the cover, containing all the advertisements, stitched up like a pamphlet, and preserving it from injury till bound in a volume for future reference.

J. F., of Nottingham, will please to apply to the publisher regarding the works he mentions.

Our usual weekly Lists of Bills in Parliament relating to the Law, with notes, will be resumed in the next number.

The Dublin Law School shall receive early attention.

We shall advert to the question of the Serjeants in our next number.

# The Legal Observer.

MONTHLY RECORD FOR JANUARY, 1840.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## REMARKABLE TRIALS.

### CASE OF JOHN FROST, FOR TREASON.

January 1840.

The trial of John Frost came on at Monmouth, on the 31st December. Sir John Campbell (the *Attorney General*), Mr. Serjeant Wilde (the *Solicitor General*), Mr. Serjeant Ludlow, Mr. Serjeant Talfourd, Mr. Wightman, and Mr. Talbot, appeared as counsel for the Crown; and Sir Frederick Pollock and Mr. Kelly, for the prisoner. Mr. Thomas and Mr. Rickards, were counsel for other prisoners.

The first day was occupied in challenging and swearing in the jury. On the 1st January the case was opened for the Crown, and the point of law taken, as mentioned p. 194, *ante*, on the ground of the non-delivery of the list of witnesses at the same time that the copy of the indictment was delivered under 7 Anne, c. 21.<sup>a</sup> On the 2d, 3d, and 4th January the examination of the witnesses for the prosecution proceeded; and on the 6th and 7th, Sir F. Pollock and Mr. Kelly addressed the jury in defence. The *Solicitor General's* reply occupied part of the 7th and the greater part of the 8th, and

on the latter day the Lord Chief Justice *Tindal* summed up the case to the jury.

The length of this and the other trials render it impossible to do more in these pages than state the summing up to the jury by the Lord Chief Justice at the close of the first trial.

Gentlemen of the jury, this important case having been closed on the part of the prosecution, and on the part of the prisoners, the counsel for the prosecution having stated the case for the Crown, and called the evidence which you have heard, and having afterwards commented upon that evidence, and the counsel for the prisoner having also stated the case for the defence, and having called such witnesses as he thought proper, our duty now commences. That duty is to endeavour to explain the law by which the case must be determined with reference to the facts which have been placed before you—to recapitulate the evidence, so that your minds may be refreshed after so long a period of investigation, and to offer such comments upon it as, whilst they are not to govern, may assist you in arriving at the decision to which you will come. It is your province to dismiss from your minds all excitement and all previous impressions which may have been made upon them on this subject. You are to consider the evidence calmly, dispassionately, and conscientiously, in order that you may arrive at such a conclusion as truth and the justice of the case demand. Gentlemen, the charge against the prisoner is, that having broken faith and his allegiance to his Sovereign, he levied war against her in these realms. The indictment itself contains several specific counts, stating in a different manner the grounds of the accusation against him. But I think that I should rather embarrass than enlighten you if I were to take up the accurate distinctions which in these are set forth. For, first or last, it must come to this question, whether the circumstances given in

<sup>a</sup> The point of law, it is expected, will be argued before all the Judges on Saturday the 1st Feb., being the day after Term.

evidence have proved that the offence of levying war against the Sovereign has been committed. The first part of the indictment has been framed upon the ancient statute of Edward III., which contains the clause of levying war against the King. The two other counts are framed upon more modern statutes, which improved the former, and which have made certain overt acts specific grounds of treason; and taking them substantially, the charge is "levying war" against the Sovereign in these realms. I shall state the law of the subject to which your minds may be applied. When the facts pass in review before you, the ancient statute of Edward I. declares what high treason is. It is "If a man do levy war against our Lord the King in his realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere." That is one ground why a party committing such an offence is guilty of treason. And the statute goes on to mention "and it is to be understood that in the cases above rehearsed that ought to be adjudged treason which extends to our Lord the King and his royal Majesty," meaning thereby the levying of war for the purpose not only of assaulting the royal person, but against the royal authority and the established law of the land. This is the state of the law, but if you look to the words "levying war against our Lord the King," it will be seen that it is confined to ancient instances of war levied against the Sovereign by rivals for the throne; for instance, such long wars as those which were the result of the quarrels between the houses of York and Lancaster, which were treated by the successful party as acts of treason against the lawful Sovereign. This is the levying of war against the King in its widest sense; and there are instances more recent, not within our own recollection, but which are within our reach by means of tradition and report, the wars of the Pretender's family, who came into these realms and levied war against the successive Sovereigns of the Brunswick family. These fill up the description given in the statute of Edward of levying war against the King in his realm. And if the statutes were confined to levying war in that sense, unless armies had been raised and generals placed at their head, and unless they entered into a conflict to deprive the Sovereign of her throne, this case would not come within the statute. Thus the statutes have been expounded by the Judges in all ages, until they were extended so that other exigencies than levying war against the King's person—exigencies which might be attended with the greatest evil, if they were not repressed, might be provided for, although not amounting to actual war. There cannot be a better exposition given of this than that laid down by one of the most learned and eminent persons who has touched upon the subject, and whose authority is considered amongst the highest and the best—Sir Michael Forster. He states that "every insurrection which in judgment of law is intended against the person of the King, be it to

dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him,—these risings all amount to levying war within the statute, whether attended with the pomp and circumstance of open war or not. And every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death." For it cannot exist without danger to the King's person. Sir Michael Forster thus distinguishes between persons armed for local and private purposes, and those armed for general and open purposes affecting the state. He lays it down that insurrections, in order to throw down all enclosures, to alter the established law, or change religion, to enhance the price of all labour, or to open all prisons—all risings, in order to effect these innovations, of a public and general armed force, are in the constructions of law, within the clause of levying war; for though they are not levelled at the person of the king, they are against his royal majesty; and, besides, they have a direct tendency to dissolve all the bands of society, and to destroy all property and government too, by numbers and an armed force. Insurrections, likewise, for redressing of national grievances, or for the expulsion of foreigners in general, or, indeed, of any single nation, living here under the protection of the king; or for the reformation of real or imaginary evils of a public nature, in which the insurgents have no special interest—rising to effect these ends by force and numbers, are by construction of law within the clause of levying war, for they are levelled at the king's crown and royal dignity." I shall trouble you no further with any statements, except to refer to one passage, written by Sir Matthew Hale, another highly venerated authority, to point out the same distinction; and I beg especially your attention to it, because when taken with reference to some of the circumstances, it may bear in favour of the prisoner at the bar. Sir Matthew Hale says, that "if men levy war to break prisons, to deliver one or more particular persons out of prisons wherein they are lawfully imprisoned, unless such are imprisoned for treason, this, upon advice of the judges upon a special verdict found at the Old Bailey, was ruled not to be high treason, but only a great riot (1668); but if it were to break prisons or deliver persons generally out of prison, this is treason." So I think the rule of law may be explained in a few words. There must be an insurrection; there must be an armed force accompanying it; and there must be an object of a general and public nature; and if all these occur in one instance it is sufficient to constitute the levying of war under the statute; and the question for you to determine will be, whether—when the facts are more fresh within your knowledge—whether the acts reported to have been done by the prisoner amount to the levying of war in the sense I have explained; or whether they amount to no more than a grievous misdemeanor. For although they may have been

attended with great danger to the country, and to the public peace, still they may not amount to the offence of high treason, but only to a grievous misdemeanor. I have observed that the learned Attorney General, in his statement of the case, said that he would be able to produce evidence to shew that the prisoner had brought down to Newport a large multitude of persons armed and arrayed unlawfully; and that it was their object to get possession of the town, break down the bridge, and to stop the mails, and that this was to be a signal to Birmingham, Lancashire, and the rest of England, and that the charter was thus to be made the law of the land. His learned friend afterwards summed up the case, and stated the outline of that upon which they would proceed, and very properly omitted one part of it—that which referred to the general purpose. The plan of the prisoner he stated to be, to get armed bands assembled to take Newport—to exercise power and control there, supersede the magistrates, and thereby excite a general rebellion throughout the kingdom. There is no doubt that the proposition, be it the one or be it the other, if it be made out satisfactorily, amounts to the crime of treason. Therefore you are to see from the evidence whether the acts and the intentions in the mind of the prisoner carried him to that extent. On the part of the prisoner, his learned counsel has said, with great propriety, that he is not bound to state the object with which any acts were done by the prisoner at the bar. He says that the offence charged against him must be proved by those who have made the charge, and that he stands there to receive the evidence against him, and not to give evidence as to what his objects were. It is true the case must depend—not upon proof brought by the prisoner contradicting the evidence for the crown—but upon the evidence for the crown. But it is not unreasonable, for it has occasionally happened both in civil and criminal cases—if appearances involve the prisoner in suspicion, it is not unusual to state circumstances which may tend to reconcile those appearances with the prisoner's innocence. Therefore the learned counsel goes on to state that the prisoner was innocent, so far as the charge of treason, and that all he intended was, neither to take the town nor to attack the military—for this he states was an accident—but to make a demonstration to the magistrates of Newport and of the county of the strength of the Chartists, for the purpose and with the intention of inducing these magistrates either to liberate Mr. Vincent and three others (who had been convicted of a political offence, and who were in Monmouth Gaol), or to mitigate the mode of treatment pursued towards them. If, then, the outline of the case stated by the officers of the crown be true, there is no doubt that the prisoner is guilty of high treason. On the other hand, if you think that the offence, upon the proof, amounts to no more than the description which the counsel for the prisoner has stated it to be, then, although it may amount to a grievous misdemeanor, involving the safety and the lives of many persons in Newport, yet

it is deficient in the main ingredient of treason, "the levying of war against the Queen in her realm," and is only an aggravated misdemeanor, and under this indictment the prisoner will be entitled to an acquittal. You will weigh the evidence, and will say upon which side the scale of Justice ought to preponderate. I had intended, at one time, to select the evidence, and to place it in positions relating to the different parts of the case, for there are portions of it with regard to which there is no dispute. But on reflection, I thought it would be more safe, in a case of such deep importance to the prisoner and to the community generally, rather to follow the evidence in the course in which it was given in Court, and to offer my comments on it from time to time as I might think them useful to you. I shall now, therefore, take up the evidence, and having recapitulated it, I shall bring your minds again to the exact question which you will have to determine on this momentous occasion. The first witness called for the prosecution was Samuel Simmonds. The learned Judge proceeded to read his note of the evidence of the witness, who stated that during the progress of the men down to Newport, on the 4th November, he heard Frost say to them, "Let us go and show ourselves to the town." This, the learned Judge observed, was the first observation stated by the witness to have been made by the prisoner. The jury, he said, would find from the other evidence, with reference to what was then passing, what those expressions referred to. They meant nothing if they were merely to go to the town and show themselves—in fact, they merely amounted to this: that a demonstration should be made in the town, and no more. The jury must, however, take the construction of the words, as well from the words themselves as from the circumstances surrounding them, and thus see what their real meaning is, and unless they could conclude from the evidence that the meaning was of deeper import than it literally meant, they must give to the words their natural meaning, which did not amount to a criminal design upon the town. The learned Judge, on referring to the evidence of Richard Waters, a special constable, observed that the evidence of the witness that he had seen Mr. Frost instantaneously before the firing commenced, showed that the prisoner had not left the mob at the time when the firing took place, or, at least, that he was there about that time, or very nearly at the time when the firing commenced. This witness stated that 100 volleys were fired. Whether he was speaking from the excitement of the moment, or meant single shots by the word "volleys," as he probably did, this was rather a larger mob than was stated by the other witnesses, not, however, so material as to affect the witness's testimony. In a subsequent part of his examination the witness said that he had heard there was a room in the Westgate appropriated to the custody of prisoners. That was not material so far as it bore upon the allegations made on the part of the prisoner—that the attack upon the

Westgate was unconnected with the soldiers—that the party never saw them until after the firing, nor knew that they were there, and that the object was merely to rescue the prisoners whom they knew to have been committed by the magistrates during the night. If there were no other evidence against the prisoner except the conflict between the soldiers and the mob led by the prisoner, certainly, it would be important for you to see how far they had a knowledge that the soldiers were there, and their object would be perfectly distinct from setting loose the whole of the prisoners and taking possession of the town. It appeared that the object sought was to rescue some prisoners from confinement. But, gentlemen, you must consider not only what took place at the Westgate, but also the arming a number of persons, and bringing them down to the town, which is proved to have been done for some purpose or other. What that purpose may have been it is for you to judge. This witness also said that he heard firing almost instantaneously after he saw Mr. Frost, and this was material, as it tended to show that the prisoner had not left the mob when that took place, or at least that he was with them at or about, or very nearly at the time, when the firing took place. Then came the evidence of Thomas Latch, which called for no particular comment; and it was followed by the testimony of Thomas Rees and James Coles, the two boys who spoke to what took place at the machine, a short distance from Newport. Upon this part of the evidence it was right he should call the attention of the jury to the particular expressions used by these witnesses. Rees stated that Coles had said about a dozen soldiers had gone down to the Westgate, and the only variance between them was that Coles said he had been told so. This discrepancy was not very material. Rees said that Jack the Fifer was near Frost with a pistol in one hand and a spike in the other. It was so far material, as regarded the question whether the party were aware the soldiers were at the Westgate—whether the boy gave a true account of what occurred when the inquiry was made. Then the witness said that Jack the Fifer desired Coles to go and say "Bye and bye we'll have the Westgate to ourselves." It was for the jury to consider whether this reference was to the state and condition of the Westgate as being partly in possession of the soldiers, or whether they had heard in the interval that some Chartist prisoners had been taken in the course of the night, which might have been communicated to them, or whether the expression "Go and say, bye and bye we shall have the Westgate to ourselves," might have been used not with any treasonable design; but for the purpose of rescuing one or two prisoners. The jury must read the evidence, and see whether it was consistent with the inference that the mob and the prisoner at the bar knew that the soldiers were at the Westgate, and took a determination to attack them, or with the more innocent, though guilty, yet not treasonable intention, of rescuing certain prisoners who had been placed in

custody during the night. It had been argued by the counsel for the prisoner that the statement of this witness—that one part of the mob went one road to Commercial-street and another part went by a different direction, was inconsistent with the statement of other witnesses; but this did not appear to him very important, for a mistake might have been made without an intention of bringing before the jury anything which the witness knew to be false. He here might have dropped off, and taken a different part; and again some of the people of the town, who were looking on, might have retired, and the main body gone on as described. It was for the jury to decide whether the observations which had been made on this point broke in upon the credit of Rees, on what was partly a collected point, as it appeared that both roads went to the Westgate. Thomas Devon Oliver, in his evidence, said that the mob, when they came to the Westgate said, "Surrender yourselves prisoners." That was met by other evidence produced on the part of the prisoner at the bar, and it had been very properly conceded that the words might have been, as described by that other witness, "Surrender up your prisoners." That was so far important, as it would tend to show that the first challenge made at the Westgate before that conflict with the soldiers, was a demand that the persons who had been kept prisoners during the night should be delivered up to them. It was for the jury to consider whether the evidence, so far as he had yet presented it to them, showed a determination to get possession of a few prisoners, rather than a determined attack upon her Majesty's troops. This witness said that he put his arm against the door, in a struggle to avoid a gun levelled at him, and that the gun went off close to his head. It did not appear that there had been any firing earlier heard than as described by Waters, and according to the evidence of this witness the going off of this gun seemed to have been the signal for the firing of many guns which were amongst the mob. The statement of the witness, that he had not seen any leader amongst the mob was contrasted with his deposition, in which he spoke of a leader; but there seemed nothing in that inconsistent with his subsequent explanation, that when he spoke of a leader he meant the man who came first up to the door. The witness Daniel Evans gave a clear account of the first shot, and from him it appeared that the firing began with the mob, and not with the soldiery. He (Evans) had proved that when the lower shutters of the window were closed, the people in the street could not see the soldiers. Wm. Adams stated that shortly after the affair took place, he saw Mr. Frost with his handkerchief up to his face in a bye road, and that he went into a coppice wood, where he lost sight of him. These circumstances did not at all make out that the prisoner was guilty of treason, because it had been seen that he was with a multitude of armed persons, who were committing a riot in the town of Newport. His apparent desire of concealment, therefore, did not prove that he

was conscious of the precise offence with which he was now charged, but that, conscious of a breach of the law, he was desirous to keep aloof at least for a limited time. The learned Judge then proceeded to remark upon some discrepancies between Sir Thomas Phillips and Captain Gray as to their relative positions in the rooms, and as to the order given to the soldiers to fire, but he observed that they were not of a nature to affect the credit of either of those gentlemen. According to all the evidence it appeared that the soldiers never fired a single volley, or a single gun until the firing commenced from the outside; and it appeared that the constables had nothing but their truncheons, or staves of office as constables. The jury had heard from the witness who was next called, as well as more distinctly from Granville Somerset, the kindness shewn by the prisoner at the bar in going to the assistance of the Duke of Beaufort on an occasion of popular ferment. Matthew Williams and two or three other witnesses took up the transaction at a different place. Their evidence was, that the night before this affair took place, the prisoner was found at a beer shop, where persons were preparing for the march, under the control and command of others, every ten persons having a leader.

*Mr. Frost.*—Not the prisoner, my Lord—the witness. The prisoner was not at that house.

Chief Justice *Tindal* corrected his former statement. It did not appear that the prisoner was at that house the night before, when the arrangements were going on. It was for the jury to say whether the persons making those arrangements formed a component part of the body who marched next day. The evidence then proceeded—"It was said we were to go to Newport, and stop the coaches, the post, and all traffic." Although the prisoner was not present on that occasion, it was material for the jury to consider whether similar statements put into his mouth by other witnesses corroborated this evidence. The jury would consider how far the theft of which Matthew Williams admitted himself to have been guilty some years ago, tended to weaken the reliance they would otherwise place upon his statements; undoubtedly it was a great breach of the law of morality, but whether it deprived him of all credit in a trial of this nature, it was for the jury to judge. The witness added, that it had been said, "If we do not break the old law we shall not get a new one," but this expression had by no means the same stringency of operation in this case as if it had been uttered by the prisoner at the bar, or in his presence. The next witness was an extremely important one, as he spoke to declarations said to have been made by the prisoner at the bar himself, and which, if made by him, would certainly possess a most serious influence in the case. On the part of the prisoner it was denied that he ever made them; and before the jury gave any weight to the evidence they must satisfy themselves that the witness who deposed to these statements was a witness to

the truth. Hodges stated that it was said in the presence of the prisoner, that the soldiers were ready to join them, and it was only for them to go down to meet the soldiers. If this declaration did take place in the presence of the prisoner, it did not appear that it had met with any objection or opposition from him. The great question was whether the jury could place reliance on the statements of the witness; and upon that they could not decide until they had heard all the circumstances which surrounded him. The evidence of that witness was extremely important, as, if true, it tended to shew what was the real intention of the prisoner in bringing, or assisting to bring together such a large number of persons on the previous night, and bringing them down to Newport. There was no doubt that if the intention was to take the place, to stop all traffic, and to put the town in the possession of a large body of men—if that was for the purpose of creating an alteration of the law for any general purpose, that would amount to treason. This depended upon the degree of credit to be given to this witness. The learned judge then proceeded to point out the supposed inconsistency in the evidence of Hodges, as stated by the counsel for the prisoners; the contradiction given, or attempted to be given to it by Mary Jones, and the rebutting evidence of Watts on the part of the prosecution, and left it to the jury to decide which of the witnesses was entitled to the most credit. George Lloyd, and the other witnesses who followed him, spoke to what took place in the adjoining parish; and from their evidence it would appear that Zephaniah Williams had repeatedly enjoined the people to keep the peace; but it seemed that this was two or three weeks before the outbreak. It appeared also that he directed the witnesses to bring bread and cheese with them to the meeting on the mountains, and that he recommended others to bring arms with them in case any one should interrupt them. It was for the jury to say whether under these circumstances he contemplated the attainment of his objects, whatever they were, by peaceable means. It was at all events very dangerous to put arms into the hands of a large body of men, lest (if occasion should offer) they might use them to attack as well as to defend. Upon this part of the case there was no direct evidence against the prisoner at the bar. It was for the jury to infer, as far as the evidence of corresponding and contrary acts on his part enabled them to infer, whether the prisoner adopted or disclaimed the acts of those who it appeared all through the transaction were more or less connected with him. With respect to the evidence of Brough, great use was made of it, both on the part of the prisoners and the prosecution, for the purpose of showing the power that Frost had over that large number of men, who were found in the town the next morning; though a body of men under the command of Jones, immediately upon the signification of a wish on the part of Frost, let the witness go. On the part of the prisoner it was used to shew the

kindness of the disposition of Mr. Frost, and that he was ready to do a kind action, and thus to lead the jury to doubt that he would be guilty of the enormities which were laid to his charge.

*Mr. Kelly.*—It is also used with reference to the time.

Chief Justice *Tindal*.—I am much obliged to you. It is also used as a contradiction to Hodges, as to the time the conversation took place between him and Mr. Frost. The next witness was John Harford. The learned Judge here read his evidence, and proceeded to say that his cross-examination was intended to invalidate the evidence given by him. The first ground was, that he was charged with taking a part in this transaction, and therefore liable to the same objection that is made to all witnesses who are partners in guilt with the men on trial? His answer was, that it was true that he was there; but he had no fear, because he was forced to be a participator in the crime, and made his escape as soon as he could, and therefore did not think that in giving that explanation he would be punished. Persons were often found in such cases, who, desirous to serve themselves, would rather state what was not the truth, provided it made a case against the prisoner. Such evidence was at all times admissible before a jury; but it is for the jury to consider how far their testimony is corroborated by other persons. This witness was also impugned upon another ground—namely, that he did not immediately come forward with this account, but remained 12 days in prison before he made the statement. The jury were to consider the circumstances, and consider whether the witness was to be credited or not. The next witness was Win. Harris, and the learned Solicitor General, looking at the contradictions and improbabilities that encircled his evidence—his making a statement on oath, one day, and his drunkenness, and then his recalling on one occasion what he had said on another—the Solicitor General had withdrawn him from the consideration of the jury. Having read the evidence of several other witnesses, he proceeded to remark upon the testimony of William Jones Philips, who apprehended Frost upon the very evening of the day of the 4th of November. This, too, gentlemen, was put on the part of the prisoner, to show that when his MSS. were searched there was nothing to show that he had carried on a treasonable correspondence with others—that there was to be found in his house no plan or design, or draft of proclamation, such as one might be led to suppose would be found with a person carrying on or being engaged in a conspiracy of the extensive nature with which the prisoner stood charged. The jury would give the prisoner the benefit which such an observation entitled him to. This is the case on the part of the prisoner. There was no other witness. The succeeding witnesses, who were not many in number, were called on the part of the prosecution. One of these witnesses, John Williams, was called to show that the demand made

on them at Westgate Inn was not to yield themselves prisoners. It was not for her Majesty's troops to yield themselves prisoners; that it was a mistake to suppose so; but that the demand in reality made was, that the persons in the inn should yield up their prisoners. This was a very proper matter to be laid before the jury, and it was now conceded on the part of the Crown, that no such demand was made as that the troops should surrender themselves prisoners. Another witness stated that Mr. Frost in public meetings recommended in his harangues always to keep the peace. This was for the consideration of the jury. It was for them to consider this (when looking to the facts for the prosecution), as in nature of evidence as to character, namely, that Mr. Frost was a peaceable character, and one not likely to engage others in a crime of this kind; as a person with a character for honesty was not likely to commit a theft. The question was one of probability. If the evidence was so strong as to break that down, then they were not to weigh probability against fact. If the scales were even at all, then they were to give the benefit of his character to the prisoner. That, said the learned judge, is the whole of the evidence, and it is upon that evidence that you are to say whether the prisoner at the bar has levied war against the Queen in her realm. That there was very great violence—that there was an attack made upon the town of Newport, and that a conflict was carried on at the Westgate, is placed beyond all doubt. It is found that a very large body of men came into the town at an unusual hour, and that they came from different points, are matters not disputed. Acts were done which you are to judge of—if their intention was to carry on a rebellion, or by a display of that which is called "moral force," but by means of which no mischief was intended, it was still expected that the magistrates would be induced either to release Vincent, or to treat him more favourably than hitherto he had been treated—if these things were done with a general design, there was high treason committed; but if it were for the other object, it would be punished, and very severely punished by the law, but not with that extremity of punishment which treason received. The learned judge then proceeded to direct the attention of the jury to the declarations made by Frost, as evidenced by the several witnesses, and stated that it was for them to consider whether or not it was the intention and object of the prisoner to attack the military, the Queen's forces, or to seize and keep possession of the Queen's town of Newport; or to blow up the bridge, and stop the mail to Birmingham; or by delaying the arrival of the letters there, or other means give effect to any concerted plan to spread general insurrection throughout the kingdom; or whether they believed that his object and intent was the more moderate one alleged by his counsel, of making such a demonstration of the moral force, as it was called, by showing how large an amount of physical force he could assemble, as might induce the magistrates

to mitigate the severity of Vincent's punishment, or to liberate him altogether. You need not (said the learned Judge) so much trouble yourselves as to see that the prisoner has clearly made that out—because that is not imposed upon him; but it is for you to look at the circumstances with all possible candour and fairness, and see if anything like such an intention appears to be probable on the face of them. For you are not to call on him to prove his innocence: it lies on the crown to prove conclusively that the crime charged against him amounts to high treason. It is your province to determine whether the crown has done this. You will look to the evidence before you, and unless you find that, by clear, conclusive, unambiguous, and certain testimony the crime is proved to amount to high treason, with all the penal consequences attached to it, it will be your duty to acquit the prisoner; but if that crime is so clearly and satisfactorily proved, you will find him guilty. If unfortunately, such be the case, and you should be fully satisfied that the evidence well establishes the guilt of the prisoner, then, however painful the matter may be to your own feelings, it will be your duty to declare him guilty by your verdict. The case is entirely for your consideration. It is a question in which the Court cannot interfere, and which it leaves to you, quite certain that you will come to that conclusion which the truth and justice of the case requires.

The jury retired for half an hour, and returned a verdict of *guilty*, with a recommendation to the merciful consideration of the Court.

Chief Justice Tindal.—Gentlemen, your recommendation shall be reported to the proper quarter.

#### ON THE LAW AS TO MARRIAGES ABROAD BETWEEN ENGLISH SUBJECTS WITHIN THE PROHIBITED DEGREES.

(Concluded from p. 212.)

The doctrine of *Lolly's case* must, however, now be considered very doubtful. It has been followed in *Conway* and *Beuzley*,<sup>o</sup> just referred to, decided in 1831; but the judge in this case said, that his decision "did not in any measure touch the case of a divorce *a vinculo*, pronounced in Scotland, between parties who, though married when domiciled in England, were at the time of such divorce *bond fide* do *uninciled* in Scotland." In *Oldaker* and *Golding*, decided 1834, the Scotch judges declared their unanimous opinion that a five months' residence in Scotland was domicile enough to dissolve an English marriage. *Warrender* and *Warrender*, decided in the House of Lords in 1834,<sup>p</sup> is a very important case, not only for the principle contained in it, but also for the indication it gives of the altered feeling of the courts with respect to these subjects. The

husband was a Scotchman, domiciled there. The marriage was an English one, with an English lady during a *bond fide* English domicile. The House of Lords, sitting on a Scotch appeal, held a Scotch divorce good.

This decision so far overturns *Lolly's case* as to shew that the supposed indissolubility of an English marriage is not law. Lord *Brougham's* reasons went directly to question the entire decision of that celebrated case. Lord *Lyndhurst* refused to go this length. He said, however, "if *Lolly's case* be law, and the decision in the Court of Scotland be also law, this consequence must follow,—that after decree of divorce is pronounced, Sir George *Warrender* will be able to marry again in Scotland. He would then have a wife in Scotland, and also another wife in England. Such would be the state of things arising from the conflicting laws of the two countries. Circumstances of a very extraordinary and very inconsistent nature would follow."<sup>q</sup> Upon the decision in *Lolly's case* I pronounce no opinion. If it be correct, and any inconvenience should result from the conflict of the law of the two countries, the legislature must apply the remedy." In this case nothing was said on the point, certainly very important to the issue between us and the civilians, whom we consider Mr. *Burge* as representing, as to the law by which the *bond fides* and sufficiency of domicile is to be judged. We presume the silence arose from considering it clear it must be by the law of the country where the decree was to be pronounced. So we infer from what Lord *Lyndhurst* said as to the domicile being clear, and that they sat as Scotch judges.

We may add the answer of a distinguished American international lawyer,<sup>r</sup> given in 1828, to one of the questions put to him by our commissioner for enquiry into the administration of justice in the West Indies. "The Courts in the United States are in the habit of dissolving marriages contracted in foreign countries; but in some of the states a residence of considerable length is required to constitute a domicile for the purpose of suing for a divorce. Our Courts would, as I conceive, notice and give effect to a divorce obtained abroad, of a marriage duly celebrated in the United States, between our own citizens or others, upon the same principles and with the same restrictions as respect the conclusiveness of other foreign sentences."

So much for the personal law, supposed to attach to every Englishman, preventing him, after an English marriage, during his first wife's life, marrying again without a divorce by act of parliament. It is clear that there is no such absolute personal disqualification, and it would also appear probable that it will be held that the decree of a competent foreign court will be sufficient though obtained *in fraudem*

<sup>q</sup> We have above remarked that similar consequences would follow if the *in fraudem legis* doctrine were allowed to prevail against binding marriages abroad.

<sup>r</sup> Mr. Wheaton, since minister at Denmark.

*legis.* This is perhaps a startling doctrine.—Like the evasions to which we have been more particularly adverted, it may be avoided, by the legislature adopting the personal law of France. We only protest against the judges attempting to do that which it seems pretty clear the legislature alone has real power to deal with.

Enough, any way, has been said to show that it is imperative on any legislature, pretending to regard the consistency, and to require the observance of its laws, not to allow the Marriage Law to remain in the state in which our English Marriage Law now is. To allow it to remain so, is to produce individual suffering without public benefit; and, without the pretence of compensation, to solicit for it dislike, evasion and ridicule. The unhappiness caused in the higher ranks by the uncertainties of this law, is, of course, individual in its character and unknown to the public. The disquietude as to their position in society, and as to the legitimacy of their children, is sure to be kept within the parties' own breasts. Like any blot in the family history, it cannot be alluded to before them, and least of all, can they be parties to urge upon the legislature the amendment of the law. The same feelings, in a degree, operate upon those in the ranks below them. But, going lower, the cruelty inflicted in such cases as Lolly's, seems to us barbarism. And for what end? Merely to vindicate laws, which make in Scotland marriage good, the children legitimate; and in England the husband a felon, children bastards, and the wife an outcast and harlot, unless indeed she survive, and then which give her his personal estate by the mouth of the same Judge—half lawyer, half ecclesiastic,—who, a week before, would have annulled the marriage, and for the good of her soul, sentenced her to do a white-sheet penance in the face of the church. The difficulty of approaching the subject is, however, great. There is a rottenness and an adventitiousness in all our notions about these matters, which make it difficult, even for lawyers, to move in them. Every one is supposed to be actuated by some personal motive. Rumors, false no doubt, of bribes and inducements applied even to senators are spread about. All power of improvement depends mainly on the higher (or legislative) classes and on the legal profession. Our profession is naturally supine. Cases, when they happen, pass by and are lost sight of in the incongruous medley of subjects which in succession come before us. Moreover, we are not fond of legislative change. Not to mention less worthy reasons, every change engenders trouble for us. Among the higher classes, it must be owned, too, that the tone of feeling as to marriage and the marriage contract is not altogether what it should be. There is therefore a suspicion attaching to the subject which makes the most correct-minded man fear to touch it. We have already mentioned the circumstances which led our attention to it. In all the cases we there alluded to, we believe a foreign marriage has taken place; and from this we are forcibly brought to the conclusion that

the law ought to be rendered certain. Though we have a feeling on the subject, we are not partizans of either view, and do not enter, it will be seen, into the question whether it should be extended further, or further restricted. All we say is, make the law certain, and do not treat this subject as if it was merely one of pounds, shillings, and pence, the rules whereof are to be elaborated by a long series of decisions on a long series of cases as they may arise. We say, do not treat it so, because each case, on this subject, as every lawyer, particularly every solicitor, must know, carries as an incident, a far greater degree of misery of mind to the parties than ever attends any other species of litigation which comes under his observation. Either we should openly adopt the personal principle of the French law, or discard it openly. The present state of uncertainty is a disgrace to our code. It is now five years since the last act was passed. On the debate upon it, it was stated, if we remember rightly, by Sir W. Follett in particular, that some law, laying down bounds as to affinity, must be passed; but that in the meantime the law must be made clear and strong. Sir W. Follett, if we recollect, expressed his readiness to assist in framing such a law. Five years, however, have not yet produced it; and in the meantime, instead of the law being made clearer and stronger, it is more directly and positively evaded, and its operation has been made more disputable than before. All we want is that some such law as proposed should pass, and the whole be made efficient. The petitioning for it, and urging it on, must rest with the solicitors. Some of the local legal associations are, we understand, thinking to take the matter up. If they do so successfully, they will accomplish an object feasible only to our profession, and add another benefit to the benefits they and our metropolitan association have already conferred, in the way of procuring the law to be made more certain and simple. A bill is, we understand, likely to be brought in next session, with reference to marriages abroad at consulates, not within the act as to foreign marriages by the English ritual; it will be a good opportunity for calling attention to the subject. We only trust it will not be lost.

P. S.—Since writing this article we have referred to Hansard, see vol. 28, p. 283; and vol. 30, pp. 729 and 948. Sir W. Follett, we see 24th August 1835, stated that he considered "marriages by affinity ought to be allowed beyond the second degree of affinity, and that a man ought to be allowed to marry the niece of a deceased wife." It appears, too, from Mr. Poulton's speech on 20th August, that Doctor Lushington promised "that in the next session, a bill should be introduced for making certain marriages in future good and valid; for the clause in question (that in Lord Lyndhurst's Act) distinctly and finally condemned to all intents and purposes, all such marriages as absolutely null and void." Dr. Lushington has never yet redeemed this promise, but is waiting, we suppose, as he said on the 24th August

1835, "till they had time to consider it in all its bearings on society." A good object, doubtless, but one, it would seem, somewhat lustral in its requirement of time.

Since the conclusion of this article was put in type, we have received the following letter:

"Sir,

"I have read with great interest your observations on the Law as to Marriages abroad between English subjects, within the prohibited degrees. There is one branch of the investigation peculiarly interesting to a large class of her Majesty's subjects,—the British Jews; and in the progress of your further observations, I respectfully suggest that the inquiry as to whether the 5 & 6 W. 4, c. 4, is applicable to British Jews, so as to interfere with and overrule their own marriage laws, is well entitled to consideration.

AN OLD SUBSCRIBER."

Our impression that a marriage between English Jews within the prohibited degrees of affinity would be held good notwithstanding the act of 6 W. 4, if not voidable before it, was stated in the second part of this article. The question is, how Jews' marriages of this sort stood before that act, i. e. if 25 Hen. 8, c. 22, s. 4, applies to them. The terms of sec. 4, "that no persons, subjects or residents of this realm, or in any of your dominions, shall from henceforth marry within the said degrees," are wide enough certainly to raise a strong argument that they were voidable in the Ecclesiastical Court previous to the late act. If they were voidable then, they are clearly, if solemnized in England, now absolutely void; and if solemnized where the *lex loci* would allow them, their validity would come within the question argued in this article.

## GRIEVANCES OF THE PROFESSION.

### CORPORATION PROSECUTIONS.

To the Editor of the *Legal Observer*.

Sir,

I AM desirous of addressing the profession on a subject of considerable importance, and hope you will allow your valuable publication to be the medium of communication. About a year ago the corporation of Manchester applied to Government, under the provisions of the General Municipal Act, for leave to hold a court of quarter sessions of the peace within the borough, and in consequence a grant was shortly afterwards made, under which the corporation have appointed different officers, one of whom (a young gentleman recently admitted an attorney) has had allotted to him the situation of "prosecuting clerk." The title of "prosecuting clerk" is something new in the history of the profession, but the very name is sufficient to shew your readers that the duty of the person who holds that situation, is to conduct all prosecutions which may take place at the sessions; and in order to secure to him all the cases, the borough magistrates, instead of

compelling the injured parties (the *real prosecutors*) to enter into the usual recognizances to prosecute and give evidence, bind over a person employed by the corporation, and by that body denominated "public prosecutor," who instructs his own attorney, such attorney being according to arrangement, the "prosecuting clerk."

This method of conducting business at the borough sessions has given rise to much dissatisfaction, the attorneys complaining that they are unfairly and unjustly robbed of their clients, and the latter that they cannot have the assistance of their professional advisers; and in consequence the matter was argued by counsel at two distinct sessions, when contrary opinions were come to. The point was first brought before the Court at the borough sessions, about two months ago, on the trial of a servant for robbing his master to a considerable amount, in which case the latter (ignorant of the new-fashioned practice) applied in the usual way to his attorney, a gentleman of many years' standing, who attended the examinations before the committing magistrates, and afterwards preferred a bill which was found true by the grand jury. A bill was also preferred by the "prosecuting clerk," and on his indictment the prisoner was arraigned and pleaded, or, was tried and found guilty. The attorney applied, through his counsel, for the costs, and thus the point was raised and argued, and the recorder stated it as his opinion, that the "public prosecutor" having been bound over, was the party entitled, and refused the attorney's application. In consequence of a matter now depending in the Queen's Bench, the borough prisoners are for the present committed to the county sessions for trial by such of the borough magistrates as have commissions for the county, and who bind over the "public prosecutor" as usual.

At the recent county sessions the question as to costs was again argued, several attorneys having been retained by their respective clients, and the chairman—a barrister of considerable experience—stated that it had always been the practice to allow the *real prosecutor* the costs, and he would not alter the rule. This being the position in which matters stand at present, perhaps some of your able correspondents may deem the subject worth their attention. It appears to me that the corporation are acting improperly and unjustly in proceeding in the manner alluded to, and I am also much mistaken if the borough magistrates, in their zeal to assist the corporate body, do not exceed their scope of authority in binding over the "public prosecutor" when the *real prosecutor* appears before them. If the plan adopted at Manchester should become an established precedent, then every magistrate, by engaging a nominal prosecutor, will be able to patronise any professional relation or favourite, and thus make the administration of justice a system of traffic and speculation. The corporation of Manchester, through their servants, the "public prosecutor" and "pro-

secuting clerk" probably derive no considerable advantage from the prosecutions which take place at the borough sessions, and thus any individual whom a magistrate might think proper to bind over in a number of cases would secure no trifling emolument, provided he took the precaution to enter into a kind of partnership agreement with an attorney.

But the matter does not rest here. The public is concerned. Every man has a right, and has hitherto been allowed, to employ his own attorney—the person in whom he can confide—and it is, to say the least, a gross act of injustice to compel him to take his business to an individual of whom he has not the

slightest knowledge. Felonies, embracing the abstraction of property in various ways, to a serious amount, frequently occur, and great skill and care is often required on the part of the attorney employed to prosecute the offenders; and it only seems reasonable that the real prosecutors should be allowed to engage professional advisers on whose abilities they can rely. But with respect to the "prosecuting clerk" I do not mean to insinuate that he is unfit for the situation which he has accepted. I believe his family and connexions are respectable, and, for sought I know, he may be quite as competent to conduct a prosecution as any other gentleman.

FAIRPLAY.

## ATTORNEYS APPLYING TO BE ADMITTED IN EASTER TERM, 1840.

### QUEEN'S BENCH.

(Concluded from page 213.)

Clerk's Name and Residence.	To whom articled, assigned, &c.
Collins, George Bassett, St. Columb.	Thurston Collins, St. Columb.
Cook, George William Francis, 15, Sussex Place, Regent's Park.	George Phillips Foster Gregory, 28, Poultry.
Cross, Seth, Trinity Terrace, Borough; and Barnsley.	Edward Newinan, Barnsley.
Chater, William, 57, Hermitage Place, St. John's Road; and Newcastle-upon-Tyne.	Thomas Chater, Newcastle-upon-Tyne.
Cooper, Henry Roberts, 4, Everett Street; Brunswick Square.	George Cooper, East Dereham.
Cox, William, the younger, 95, Drummond Street, Euston Square.	Arthur Philip Groom, 4, Henrietta Street, Cavendish Square.
Cullen, William Henry, 7, Thanet Place, Temple Bar; and Canterbury.	Stephen Plumner, Canterbury.
Coles, Robt., 80, Lombard Street; and Clifton.	Alfred Phillips and James Wason, Bristol; assigned to John Whittington, Bristol.
Cooper, John Martin, Bishopwearmouth.	Thomas Thompson, Bishopwearmouth; ass'd to Geo. Smith Ransom, Bishopwearmouth.
Childe, Harry Joseph, 5, Salisbury Street, Strand.	Joseph Shipton, Warwick; assigned to William Edward Buck, Warwick.
Chillingworth, John Williams, 28, Tavistock Place; Wribbenhall; and Kenton Street.	Edward Richmond Nicholas, Wribbenhall.
Davies, Edmund William, 5, Gloster Street, Queen Square; Abergavenny; and Drummond Street, Euston Square.	Baker Gabb and William Woodhouse Secretan, Abergavenny.
*Devey, Frederick Wm. 34, Ely Place.	Frederick Nicholls Devey, 34, Ely Place.
Douglas, Charles, Witham.	John Cutts, Witham.
Davies, Henry Touchet, articled by the name of Henry Touchet, Clevedon.	Thomas Macauley Crutwell, Bath.
Dowman, William, the younger, Sudbury.	William Dowman, Sudbury.
Dyson, James Armstrong Francis, 42, Lower Seymour Street; and Thrapston.	John Archbould, Thrapston.
Dickenson, Daniel, 3, Cumberland Terrace, Lloyd Square; Ulverstone.	Robert Francis Yarker, Ulverstone.
Eupson, Henry, Leamington Priors; Henrietta Street; and Reading.	Wm. Chalmers Empson, Leamington Priors
Eyre, George Lewis Phipps, 10, Thayer Street, Manchester Square.	William Gunner, Bishop's Waltham.
Etches, William Macconnell, Machon Bank, near Sheffield.	William Pashley Milner, Sheffield; assigned to Thomas James Parker, Sheffield.
Fall, John, 26, Thavies' Inn; Newcastle-upon-Tyne; and Stonegravels.	Bernard Maynard Lucas, Chesterfield; ass'd to Henry Inglesew, Newcastle-upon-Tyne.
† Fewkes, Paul, Esther Cottage, Esher Street, Lambeth.	Joseph Parkes, 21, Great George Street, Westminster.
Field, William, 64, Great Russell Street, Bloomsbury Square; and Tavistock Place.	Henry Downe Barton, Exeter.

\* Marked thus, are C. P. applications.

† Marked thus, Exchequer of Pleas.

*Clerk's Name and Residence.*

Ford, Henry, 4, Manchester Street, Gray's Inn Road; and Portsea.  
 Frodsham, Fred. Liverpool; and Alfred Street.  
 Gregory, Thomas, 5, Upper Montague Street, Russell Square.  
 Grigson, Edward Robert, Watton.

Gant, John Castle, 35, London Commercial Sale Rooms, Mincing Lane.

Gill, James, 4, Princes Street, Bedford Row; and Liverpool.

Gurney, John, 15, Everett Street, Russell Square; and Truro.

Gay, William, 2, Chapel Street, Bedford Row; King's Lynn; and 6, New Ormonde Street.

Gaskoin, John, 13, Trevor Square, Brompton.

Gossett, Montague, 20, Little St. Thomas Apostle; and George Street.

Grant, Charles William, 1, Plowden Buildings, Temple; and Great Russell Street

Holmes, Edward Carleton, 45, Guildford St.; 1, Stone Buildings; 6, Raymond Buildings, Gray's Inn.

Haigh, John Luke, Selby.

Hill, Granville Diggle, 52, King Sq.; and Bath.

Hostage, John, Chester.

Hitchcock, William, 25, Claremont Terrace, Pentonville.

Honeywill, William Henry, 4, Prospect Cottages, Islington.

Hamley, Edmund Gilbert, 15, Alfred Place, Bedford Sq.; Bodmin; and Chadwell Street.

Haxby, Joseph Barber, 11, Chapel Place; and Wakefield.

Heald, Richard Henry, Leeds.

Harfield, Robert, 2, Craven St.; and Arundel.

Harrison, George Frederick, 98, Upper Stamford Street; and Leeds.

Hodgson, John, Manchester.

Homes, William, the younger, Ledbury.

Harding, Henry, Longport.

Holland, Thomas Moore Woollams, 7, Harpur Street, Red Lion Square; and Upton-on-Severn.

Hair, Thomas, Kidderminster.

Ilderton, Henry Decimus, 52, Lincoln's Inn Fields.

Johns, Henry Trembleere, 7, Mylne Street, Myddelton Square, and Blandford.

Jackson, William, Carlisle.

Jutsum, Edward Millner, 64, High St., Aldgate Justice, Thomas Francis, Cursitor Street; and Upper Harley Street.

Ingram, James, 9, Vere Street.

Johnson, James, 22, Ebury Street, Pimlico; Higher Broughton; Aldersgate Street; and Belgrave Street, South.

Jessop, Francis Johnson, Derby; and Charlotte Street, Bloomsbury.

Kingdon, Thos., 30, Ely Place; & Sidmouth.

*To whom articled, assigned, &c.*

Archibald Low, Portsea.

Robert Frodsham, Liverpool.

Jonas Gregory, 12, Clement's Inn.

Edward Harvey Grigson, Watton; assigned to Charles Goodwin, Watton.

Anthony Brown, Mincing Lane.

Robert Frodsham, Liverpool.

William Paul, Truro.

Philip Wilson, King's Lynn.

Bryan Holme, New Inn.

Richard Roy, Lothbury.

John Hartley, Settle.

William Holmes, Brookfield; assigned to Edward Foach Hillier, 38, Cumming Street, Pentonville.

Edward Parker, Selby.

Thomas Macaulay Crutwell, Bath.

John Finchett Maddock, Chester.

Charles Hyde, Ely Place.

John Nicholetts, South Petherton; assigned to H. Seymour Westmacott, 1, Gray's Inn Sq.

Edward Pearce, Bodmin; assigned to Henry Coode, 8, Guildford Street.

Twiselton Haxby, Wakefield.

George Rawson, the younger, Leeds.

William Duke, Arundel.

John Atkinson, Leeds.

Matthew Gaunt, Leeds; assigned to T. Lechmere Marriott, Manchester.

William Homes, Poole End; assigned to Thomas Jones, Ledbury.

Thomas Harding, Newcastle-under-Lyne; assigned to John Plant Harding, Burslem.

Thomas Bird, Upton-upon-Severn; assigned to Thomas Loftus, New Inn.

Henry Maddocks Daniel, Worcester and Kidderminster.

George Leeke Baker, 52, Lincoln's Inn Fields.

Henry William Johns, Blandford.

William Dobinson, Carlisle.

David Jennings, 71, Whitechapel Road.

James Beaumont, 28, Golden Square, and Lincoln's Inn Fields; assigned to John Pike, 28, Golden Square.

George Abraham Crawley, 46, Salisbury Sq.

John Makinson, Manchester.

Thomas Fowke Andrew Burnaby, Newark-upon-Trent; assigned to William Edward Tallents, Newark-upon-Trent; assigned to Godfrey Tallents, Newark-upon-Trent.

Edward Harley, the younger, Bristol; assigned to Alfred Lester, Sidmouth.

*Clerk's Name and Residence.*

Kingdon, William, 26, Chancery Lane; Friday Street; and Gray's Inn Square.  
 Kusteman, William, 27, Great Russell Street; and Langport, Eastover.  
 King, Paul John, 4, Euston Grove; and Hampstead Road.

Kingson, George Edwin, 30, Surrey Street, Strand; Bideford; and Tillotson Place.  
 Kemp, George Baring, Brighton; Florence in Tuscany; and 35, Clarendon Street, Somer's Town.  
 Lamb, Charles, 40, Ludgate Street; and Reading.  
 Leitch, Thomas Carr, 3, Kittisford Place, Hackney Road; and North Shields.  
 Law, John, the younger, Greenheys.

Moultrie, Charles, 35, Lincoln's Inn Fields.

Maples, Frederick, 6, Frederick's Place, Old Jewry.  
 Mayo, John Ryall, 47, Old Compton St., Soho.  
 Melland, William, 72, Albany Street, Regent's Park; and Brampton.  
 Martell, Chas., 2, St. George's Place, Walworth.  
 Meymott, William Joseph, 86, Blackfriar's Road.  
 Mansell, Frederick, 29, Coleman Street; and Berwick-upon Tweed.  
 Moss, William Henry, the younger, Kingston-upon-Hull.

Merriinan, Frederick Ward, 50, Lincoln's Inn Fields; and St. Albans.

Monkman, Henry William, 13, St. Edmund's Place, Aldersgate Street; York; Leeds; and Portugal Street.

Messiter, Milam, 32, Bedford Row; and Froune.

Norris, Anthony, 41, Upper Norton Street, Portland Place.

Nevile, Charles James, 21, East Street, Lamb's Conduit Street; Kettering; and Walcot.

Ord, Charles Ovington, 39, Upper Stamford Street, Blackfriars' Road; and York.

Palmer, William Henry, 51, Manchester Street; and Henrietta Street, Brunswick Square; and Gellyswick House, Pembrokeshire.

Perry, Henry, Whitehaven.  
 Powell, John, Birmingham.

Pott, Jos. Compton, Bridge Street, Southwark.  
 Pope, Charles Lee, Everett Street, Russell Square; and Maidstone.

Rendall, Alfred, Kington, Herefordshire.

Robinson, Francis, 5, Terrace, Putney.

Rush, John Brook, Brook House, Old Kent Road.

Rogers, Francis, 15, Alfred Place, Bedford Sq.; Penzance; and 18, Chadwell Street.

Robinson, Thomas, 34, Clarendon Street, Somers Town; 51, Pratt Street; and Huddersfield.

*To whom articled, assigned, &c.*

Nathaniel Overbury, Friday Street; assigned to Edward T. Whitaker, Gray's Inn Squars.  
 Nicholas Broadmead, Langport, Eastover.

Edward Robert Porter, 1, New Court, Middle Temple; assigned to Thomas Wright Nelson, 1, New Court, Middle Temple.  
 Charles Carter, the younger, Bideford.

Joseph Maynard, 3, Mansion House Place; assigned to Frederick Lewes Austen, 6, Ely Place.

John Barber, and T. P. Davidson, Furnival's Inn.

John Lowrey, North Shields.

David Law, Manchester; assigned to Joshua Southward, Manchester; assigned to Marmaduke Foster, Manchester; assigned to Francis Dickin, Manchester.

John Allan Powell, 9, New Square, Lincoln's Inn.

Thomas Frederick Maples, 6, Frederick's Place, Old Jewry.

John Pyne, Somerton; assigned to John Slade, Yeovill.

John Cutts, Chesterfield.

George Pritchard, 28, New Bridge Street.

John Gilbert Meymott, 86, Blackfriar's Road.

Edward Elliott, Berwick-upon-Tweed; assigned to Jonathan Ward, Stokesley.

William Henry Rosser, Gray's Inn Place; assigned to Charles Frost, Kingston-upon-Hull.

Thomas Baverstock Merriinan, Marlborough; assigned to Thomas Ward Blagg, St. Albans; assigned to Sam. B. Merriinan, Austin Friars.

Thomas Walker, York.

George Messiter, Frome; assigned to Edward Francis Fennell, Bedford Row.

Horatio Nelson Fisher, 12, London Street, Fenchurch Street.

John Bridges, Red Lion Square.

Henry Clarke, Guisborough.

William Evans, Haverfordwest.

Wilson Perry, Whitehaven.

John Bird, Birmingham; assigned to William Dunn Wheeler, Birmingham.

William Woodgate, 3, New Sq.; Lincoln's Inn.

John Monckton, Maidstone.

Benjamin Bodenham, Kington, Herefordshire.

George Stone, 36, Jermyn St., St. James's.

John Roger Bush, 18, Austin Friars.

Edward Hearle Rodd, Penzance.

William Barker, Huddersfield.

*Clerk's Name and Residence.*

Roberts, Richard, 9, Wells Street, Gray's Inn Road; and Birmingham.

Roberts, Rathbone Bartlett, 42, Spencer Street, Northampton Square.

Simcox, Alexander, 2, Upper Baker Street, Pentonville; Dublin; and Harborne.

Shearm, Mark, Stratton.

Smith, George, 19, Charles Street, Euston Square; and Boston.

Stephenson, M'Carthy, 94, Skinner Street, Snow Hill; and Kensington.

Saunders, Arthur William, 4, Duke Street, St. James's.

Sumpter, William Richard, 17, Upper North Place, Gray's Inn Road; and Cambridge.

Smith, Thomas, 10, Seymour Place, New Road.

Stavenson, John, 5, Judd Place, East, New Road.

Sedgeley, Charles, Carlisle.

Scudamore, Frederick, Ashford; and Maidstone.

Smeare, Christopher, Oundle, Northamptonshire.

Scott, William Henry, Chelmsford.

Sergeant, Robert, Wadebridge; and Callington, Cornwall.

Sears, Henry, Maidstone.

Simpson, George Septimus, 39, Wakefield Street, Regent's Square; Peterborough; and Brownlow Street.

Thompson, Thomas, 5, St. Ann's Terrace, North Brixton.

Torre, John Alexander, 9, St. James's Street.

Tryon, Henry Curling, 13, New North Street, Red Lion Sq.; Rainsgate; and 2, Wells St.

Thorp, Frederick William, 39, Wakefield St., Regent's Square; and St. Ives.

Taylor, Horatio Trafalgar, Middleton.

Vrignon, Gabriel, 37, Upper Baker Street, Marylebone; Great Portland Street; and St. John's Wood.

Vynner, Charles James, 55, Lincoln's Inn Fields; and Southampton Row.

Woodrow, Jeremiah, 40, Prospect Place, Southwark; Ryde; Huntley Street; William Street; and Hand Court.

Williams, William John, 34, Northampton Square; and Park Place, Kennington Cross.

Wormald, William, Leeds.

Weddell, James Call, 115, Bunhill Row.

Wybergh, John, the younger, 14, Ebury Street, Eaton Square.

Wilkinson, Robert Thomas, 89, Upper Seymour Street, Euston Square; Bishopwearmouth; and Everett Street.

Woods, Arthur William, 27, Francis Street, Bedford Square; and Croydon.

White, Samuel George, 5, Warren Street, Pentonville.

Winckworth, Lawrence Henry, Maidstone.

Walker, James, 2, Verulam Buildings; and Dover.

*To whom articled, assigned, &c.*

William Palmer, the elder, Birmingham.

Henry Lucas, Newport Pagnell.

Clement Ingleby, Birmingham.

Edward Shearm, Stratton.

Peter Tuxford, Boston; assigned to Henry Buxton Kenwick & Hen. Harwood, Boston.

John Stephenson, Newark-upon-Trent.

William Lawrence Bicknell, 57, Lincoln's Inn Fields.

Charles Pestell Harris, Cambridge; assigned to Frederick Barlow, Cambridge.

Richard Edgar Smith, 3, New Boswell Court.

George Waugh Stable, Newcastle-upon-Tyne.

William Hodgson, Carlisle; assigned to T. Houghton Hodgson, Carlisle.

Robert Furley, Ashford; assigned to Charles Scudamore, Maidstone.

George Croxton, Oundle.

Robert Bartlett, Chelmsford.

Richard Symons and Edward Luxmore, Wadebridge.

Thomas Walker, Dartford; assigned to Carey Bonham Hopkins, Dartford; assigned to John Hayward Dartford.

Thomas Atkinson, Peterborough; assigned to Evan Morris, Temple.

Henry Ling, 34, Bloomsbury Square.

Edward Knocker, Dover; assigned to George Washington Abbott, 9, St. James's Street.

John Mercer, the younger, Rainsgate.

George Game Day, St. Ives.

Richard Halsall, Middleton.

Joseph Mountford, Exeter; assigned to George William Finch, 57, Lincoln's Inn Fields.

Simon Adams Becke, Ironmonger's Hall.

William Butt, Ryde.

Frederick Cooper, Brighton.

Timothy Beavor, Wakefield.

Robert Weddell, Berwick-upon-Tweed; assigned to William Pringle, 3, King's Road.

Richard Rushton Preston, George Street, Westminster.

Robert Aiskell Davison, Bishopwearmouth.

Henry Woods, Godalming; assigned to William Drummond, Croydon.

Cecil Proctor Wortham, Buntingford.

Henry Atkinson Wildes, Maidstone.

Thomas Baker Bass, Dover; assigned to Edward Knocker, Dover; assigned to Joseph N. Mourilyan, 2, Verulam Buildings.

*Clerk's Name and Residence.*

Watson, Richard Thomas Rundle, 50, Southampton Row, Russell Square; Princes St.; Exeter; and King Street.

Wiggins, James Mann, 20, Gloucester Street, Queen Square; and York.

Ward, Frederick Thomas, 32, Bedford Row.

*To whom articled, assigned, &c.*  
George Ogle, 4, Great Winchester Street.

William Napier Dibb, York.

Charles Scudamore Ward, Maidenhead; assigned to William James Ward, Maidenhead,

*Added to the List pursuant to Judges' Orders.*

Alderson, Alfred, 189, Fleet Street; and Carnarvon.

Robert Williams, Carnarvon.

Bourne, Henry, Binnfoot, Cumberland.

Christopher Rymer, Walsingham.

Harrison, George, 29, Mount Street, Whitechapel; Bishopwearmouth; and Colet Pl.

George Harrison, the Elder, Bishopwearmouth; assigned to Joseph John Wright-Sunderland.

Robinson, Thomas, 11, Cecil Street, Strand; Cockerton; and Baker Street, Lloyd Square.

William Rymer, Darlington.

Shackleton, John, Leeds.

William Hargreaves, Leeds.

Turner, John Gilgrass, Horbury, near Wakefield.

William Stewart, Horbury.

Walmsley, Edward, Counter Hill, New Cross, Deptford.

Archibald Keightley, 43, Chancery Lane.

Wright, Newenham Charles, 11, Queen Square, Bloomsbury.

Alexander Milburn, Millman Street; assigned to James Boxer, Moorgate.

**MASTERS EXTRAORDINARY IN CHANCERY.**

*From December 24th, 1839, to January 17th, 1840, both inclusive, with dates when gazetted.*

Bell, Henry, Liverpool. Dec. 24.

Derbshire, Robert Richard, Liverpool. Dec. 24.

Edwards, Robert Phippen, Stoughton Cross, Somerset. Jan. 3.

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From December 24th, 1839, to January 17th, 1840, both inclusive, with dates when gazetted.*

Aldridge, Wm. and Henry Job Humpage, Stroud, Gloucester, Attorneys and Solicitors. Dec. 24.

Birch, Richard William, and Thomas Eaton, Derby, Solicitors and Attorneys. Jan. 14.

Carr, William Thomas, and Dixon Robinson, Blackburn and Clitheroe Castle, Lancaster, Attorneys and Solicitors. Jan. 10.

Mant, Henry John, and William Adair Bruce, Bath, Attorneys and Solicitors. Dec. 31.

Richardson, Charles, and John Pike, Golden Square, Attorneys and Solicitors. Dec. 24.

Tyndall, Thomas, and John Rawlins, Birmingham, Attorneys and Solicitors. Jan. 7.

White, George and Francis Thirkill White, Grantham, Lincoln, Attorneys and Solicitors. Dec. 31.

Yarborough, Richard Cooke, and Charles Cator, Lincoln's Inn Fields, Attorneys and Solicitors. Jan. 10.

**BANKRUPTS.**

*From December 24th, 1839, to January 17th, 1840, both inclusive, with dates when gazetted.*

Atkinson, Thomas Radcliffe, and Charles Johnson Atkinson, Huddersfield, York, Fancy and Woollen Cloth Merchants. Clarke & Co., Lincoln's Inn Fields: Whitehead & Co., Huddersfield. Jan. 10.

Brown, John, Leeds, York, Flax Spinner. Coodeall, Lincoln's Inn Fields: Stott, Leeds. Dec. 27. Blundell, Elizabeth, Samlesbury, Lancaster, Innkeeper. Wiglesworth & Co., Gray's Inn: Wilkinson, Blackburn. Dec. 27.

Buckley, Samuel, Stalybridge, Ashton-under-Lyne, Lancaster, Shopkeeper. Clarke & Co., Lincoln's Inn Fields: Higginbottom & Co., Ashton-under-Lyne. Dec. 27.

Bolton, John, and William Ireland, Manchester, Check and Gingham Manufacturers. Johnson & Co., Temple: Bagshaw & Co., Manchester. Dec. 31.

Bagshaw, John, and Robert Kinch, Manchester, Cotton and Woollen Manufacturers. Capes & Co., Bedford Row: Law, Manchester. Dec. 31.

Brown, James, Fowey, Cornwall, Draper. Alsager, Off. Ass.: Steedman, Broad Street Buildings. Jan. 3.

Bacon, John, Low Ousegate, York, Grocer. Rushworth, Staple Inn: Smith, jun., York. Jan. 3.

Bull, Anthony, Bucklersbury, London, Merchant. Alsager, Off. Ass.: Cooper, Manchester: Lloyd, Cheapside. Jan. 7.

Bowen, Charles, Oxford, Linen Draper. Green, Off. Ass.: Hardwick & Co., Cateaton Street. Jan. 7.

Byrne, Charles Holtzendorff, Liverpool, Sail Maker. Vincent & Co., Temple: Robinson, Liverpool. Jan. 7.

Bendle, Luke, Barnstaple, Devon, Draper. Abbott & Co., Charlotte Street, Bedford Square: Messrs. Bennett, Manchester: Brewridge & Co., Barnstaple. Jan. 10.

Brandon, William Barnard John, Trinity Square, Newington, Surrey, and of Lock's Fields, in the same parish, Manufacturer. Whitmore,

**BANKRUPTCIES SUPERSEDED.**

*From December 24th, 1839, to January 17th, 1840, both inclusive, with dates when gazetted.*

Brown, James, Oldham, Lancaster, Grocer and Tea Dealer. Jan. 3.

Dalby, Richard, Great Malvern, and of Kidderminster, Worcester, Miller. Jan. 7.

Smith, William, Union Vale, Blackheath, Kent, Corn and Coal Merchant. Jan. 10.

- Off. Ass.: *Meymott & Co.*, Great Surrey Street. Jan. 14.
- Burt, Edward, Aston-juxta-Birmingham, Victualler. *Chaplin*, Gray's Inn Square: *Harrison*, Birmingham. Jan. 14.
- Barker, William Thomas, Birmingham, Plater. *Palmer & Co.*, or *Arnold & Co.*, Birmingham: *Austin & Co.*, Gray's Inn. Jan. 14.
- Burr, Joseph, Wells, Somerset, Baker. *King & Co.*, Gray's Inn Square: *Robins & Co.*, Wells. Jan. 14.
- Cooper, John, Keele, Stafford, Tailor. *Harding*, Newcastle-under-Lyme: *Wilson*, Symond's Inn, Chancery Lane. Dec. 27.
- Crouch, Frederick William Nicholls, Plymouth, Devon, Music and Musical Instrument Seller. *Wood & Co.*, Dean Street, Soho: *Eastlake*, Plymouth. Dec. 27.
- Cox, Joseph Abraham, Union Street, Southwark, Surrey, Victualler. *Green*, Off. Ass.: *Harper*, Kennington Cross. Jan. 3.
- Coates, John, Manchester, Merchant and Dry-salter. *Makinson & Co.*, Temple: *Atkinson & Co.*, Manchester. Jan. 17.
- Derham, Robert, Leeds, York, and Walter Alan Hinde, and Jas. Derham, Dolphinstone, Lancaster, Worsted Spinners. *Robinson & Co.*, Essex Street, Strand: *Ward & Co.*, Leeds. Jan. 10.
- Dawson, William Ambrose, Liverpool, Merchant. *Whitley & Co.*, Liverpool: Messrs. *Lowe*, Southampton Buildings, Chancery Lane. Jan. 10.
- Davies, Edward, King's Mills, Wrexham, Denbigh, Miller and Corn and Flour Dealer. *Lewis*, Wrexham: *Parker*, Pump Court, Temple. Jan. 10.
- Edwards, John, Liverpool, Cabinet Maker. *Shackleton & Co.*, Liverpool: *Baxendale & Co.*, Great Winchester Street. Dec. 31.
- Ellis, Hugh, and George Henry Bryson, Manchester, Brace, Belt, and Web Manufacturers. *Sale & Co.*, Manchester: Messrs. *Baxter*, Lincoln's Inn Fields. Jan. 14.
- Edwards, John, Littleworth, Gloucester, Baker and Confectioner. *Jones & Co.*, Crosby Square: *Smallridge*, Gloucester. Jan. 14.
- Edwards, Richard, Aston nigh Birmingham, Victualler. *Smith & Co.*, New Boswell Court, Lincoln's Inn. *Greatwood*, or *Parkes & Co.*, Birmingham. Jan. 17.
- Fall, George, and John Nichols Horrocks, Manchester, Lancaster, Dyers, Printers, and Pressers. *Makinson & Co.*, Temple: *Atkinson & Co.*, Manchester. Dec. 31.
- Foster, James, late of Abingdon, Berks, but now of Southwark Square, Southwark, Surrey, Carrier. *Turquand*, Off. Ass.: *Close*, Furnival's Inn, Holborn. Jan. 7.
- Fox, John, Barnsley, York, Linen Manufacturer. *Shepherd*, Barnsley: *Perkins*, Gray's Inn Square. Jan. 7.
- French, Joseph, jun., Coventry, Ribbon Manufacturer. *Austin & Co.*, Gray's Inn: *Troughton & Co.*, Coventry. Jan. 7.
- France, William, of Wakefield, York, Maltster. *Scott & Co.*, Lincoln's Inn Fields: *Bakewell*, Wakefield. Jan. 10.
- Proud, Thos. Wilson, Newcastle-upon-Tyne, Ship and Insurance Broker. *Gibson*, Newcastle-upon-Tyne: *Swain & Co.*, Old Jewry. Jan. 14.
- Finch, George, Newbury, Berks, Cabinet Maker and Upholsterer. *Abbott*, Off. Ass.: *Tate*, Basinghall Street. Jan. 17.
- Guigell, George, West Smithfield, London, and of York Street, York Road, Surrey, Hay Salesman. *Gibson*, Off. Ass.: *M'Leod & Co.*, London Street, Penchurch Street. Jan. 17.
- Gregory, Thomas, Macclesfield, Chester, Inn-keeper. *Cole*, Adelphi Terrace: *Procter*, Macclesfield. Dec. 24.
- Gootch, William, Bath Street, Clerkenwell, Grocer, Tea Dealer and Cheesemonger. *Green*, Off. Ass.: *Blake & Co.*, Essex Street, Strand. Dec. 27.
- Griffith, William Henry, Shrewsbury, Salop, Wharfinger. *Ronalds*, Gray's Inn Square: *Cooper*, Shrewsbury. Dec. 27.
- Grocock, Samuel, Leicester, Builder. *Lightfoot & Co.*, Hull: *Walmsley & Co.*, Chancery Lane. Dec. 31.
- Green, John Wilson, Dartmouth, Devon, Ship Builder. *Watson & Co.*, King's Arms Yard: *Gilbard*, Devonport. Jan. 3.
- Geddes, William, Albion Place, Hyde Park Square, Middlesex, Baker. *Belcher*, Off. Ass.: *Harrison*, Walbrook. Jan. 7.
- Gill, Richard, Rushfield, Almondbury, York, Fancy Manufacturer. *Battye & Co.*, Chancery Lane: *Floyd*, Huddersfield. Jan. 7.
- Gauthorp, John, Cheetham, Manchester, Chemist and Druggist. *Johnson & Co.*, Temple: *Wood & Co.*, Manchester. Jan. 14.
- Gans, Sigismund, Newcastle-upon-Tyne, Furrier, and Dealer in Fancy Articles. *Meggison & Co.*, King's Road, Bedford Row: *Stanton*, Newcastle-upon-Tyne. Jan. 14.
- Higgs, William, Jermyn Street, St. James's, Soho Water Manufacturer, Chemist and Druggist. *Graham*, Off. Ass.: *Walters & Co.*, Basinghall Street. Dec. 24.
- Hart, Thomas Bognor, Sussex, Innkeeper. *Surr*, Lombard Street. Dec. 24.
- Harris, Ambrose, Rhyll, Rhyddlan, Flint, Hotel Keeper: *Wyatt*, St. Asaph. Dec. 27.
- Hind, William, Preston, Lancaster, Millwright. *Walmsley & Co.*, Chancery Lane: *Bray*, Preston. Dec. 27.
- Huxley, Thomas Croft, Liverpool, Cabinet Maker. *Norris & Co.*, Bartlett's Buildings: *Toulmin*, Liverpool. Dec. 27.
- Howell, James, Bradford, Wilts, Baker and Tallow Chandler. *Fisher*, Bucklersbury. Dec. 27.
- Harris, Thomas, John Street, America Square, London, Merchant. *Gibson*, Off. Ass.: *Hill*, Copthall Court. Jan. 3.
- Hawker, William, College Street, Dowgate Hill, London, Carman. *Johnson*, Off. Ass.: *Baddeley*, Leman Street, Goodman's Fields. Jan. 3.
- Hargreaves, Charles, Liverpool, Tailor and Draper. *Vincent & Co.*, Temple: *Brabner & Co.*, Liverpool. Jan. 3.
- Horrold, Alfred Henry, Frome Selwood, Somerset, Chemist and Druggist. *Frampton*, South Square, Gray's Inn: *Miller*, Frome Selwood. Jan. 7.
- Holroyd, John., and Frederick Holroyd, Halifax, York, Cloth Merchants. *Walker*, Furnival's Inn: *Blackburn*, Leeds. Jan. 10.
- Honey, Charles, Littlemoor, Oxford, Corn Dealer. *Hester*, Oxford: Messrs. *Baxter*, Lincoln's Inn Fields. Jan. 14.
- Hudson, John, Arthur Street West, London, Livery Stable Keeper, Plumber, and Builder. *Green*, Off. Ass.: *Stevens & Co.*, Queen Street, Cheap-side. Jan. 17.
- Jones, Thomas Moreton, Llanfyllin, Montgomery, Skinner and Tanner. Messrs. *Burfoot*, Temple: *Royle*, Llanfyllin. Dec. 24.
- Jordan, Francis, jun., and Robert Lovel Magrath, Liverpool, Merchants. *Baxendale & Co.*, Great Winchester Street: *Shackleton & Co.*, Liverpool. Jan. 7.
- Johns, Henry, jun., Exeter, Builder. *Keddall & Co.*, Feuchurch Street: *Stogdon*, Exeter. Jan. 10.

- Kipling, Christopher, Warren Street, Fitzroy Square, Victualler. *Clark, Off. Ass.* : *Harpur, Kennington Cross.* Jan. 10.
- Legh, William, New Windsor, Berks, Corn Dealer. *Hornidge & Co., Bloomsbury Square.* Dec. 27.
- Lockitt, Joseph, Congleton, Chester, Grocer and Tea Dealer, and Brick Maker. *Pickford, Congleton : James & Co., Old Jewry.* Dec. 31.
- Leonard, Charles, Sheffield, York, Bacon Factor. *Rodgers, Devonshire Sq., Bishopsgate Street : Unwin, Sheffield.* Jan. 17.
- Moore, John, Finchley Common, Finchley, Middlesex, Victualler. *Clark, Off. Ass.* : *Fry & Co., Cheapside.* Dec. 24.
- Manning, Henry, Dulwich, Surrey, Boarding House Keeper. *Abbott, Off. Ass.* : *Crosse, Surrey Street, Strand.* Dec. 27.
- Mead, Samuel, and William Mead, Liverpool, Iron Merchants. *Duncan & Co., Liverpool : Adlington & Co., Bedford Row.* Dec. 27.
- Mickelthwate, Arthur, Sheffield, York, Horn Merchant. *Butterfield, Gray's Inn Square : Potter, Rotherham.* Dec. 27.
- Morris, Joseph, Pimlico, Middlesex, Coal Merchant. *Lackington, Off. Ass.* : *Richards & Co., Lincoln's Inn Fields.* Dec. 31.
- MacLintock, William, Barnsley, York, Linen Manufacturer. *Shepherd, Barnsley : Perkins, Gray's Inn Square.* Jan. 3.
- Miles, Thomas, Tongwynlas, near Cardiff, Glamorgan, Cordwainer. *Jones & Co., Crosby Square : King, Bristol.* Jan. 3.
- Naylor, William Burrows, Pitmoor, Brightside Bierlow, Sheffield, York, Brick Maker. *Rodgers, Devonshire Square, Bishopsgate Street : Ryalls, Sheffield : Rayner & Co., Sheffield.* Dec. 24.
- Owen, Edward, Maesglas, Amlwch, Anglesea, and of Liverpool, Cattle Dealer. *Chester, Staple Inn : Rose, Amlwch : Hodgson, Liverpool.* Dec. 31.
- Potter, Mark, Earle's Henton, Dewsbury, York, Blanket Manufacturer. *Watts, Dewsbury : Jaques & Co., Ely Place.* Dec. 24.
- Poynton, James, Liverpool, Draper. *Abbott & Co., Charlotte Street, Bedford Sq. : Bennett & Co., Manchester : Brabner & Co., Liverpool.* Dec. 31.
- Polden, Alexander James, and Thomas Morton, Fenchurch Street, London, Merchants. *Green, Off. Ass.* : *Dickson, Bucklersbury.* Jan. 10.
- Prichard, Thomas, Sidcup, Foot's Cray, Kent, Surgeon. *Graham, Off. Ass.* : *Powell, Martin's Lane, Cannon Street.* Jan. 17.
- Perrier, Charles, Nottingham, Lace Manufacturer. *Capes & Co., Bedford Row : Wadsworth, Nottingham.* Jan. 17.
- Robinson, Frederick, Coventry, Ribbon Manufacturer. *Austin & Co., Gray's Inn : Trougham & Co., Coventry.* Dec. 31.
- Richardson, Richard, Great Driffield, York, Draper. *Milne & Co., Temple : Bent, Manchester.* Jan. 3.
- Ridsdale, John, and Henry Ridsdale, Leeds, York, Stuff and Blanket Merchants. *Hawkins & Co., New Boswell Court, Lincoln's Inn : Atkinson & Co., Leeds.* Jan. 3.
- Ross, Jesse, Leicester, Wool Stapler. *Toller, Gray's Inn Square : Messrs. Toller, Leicester.* Jan. 14.
- Silk, William Banks, Jewin Street, Cripplegate, Builder. *Belcher, Off. Ass.* : *Selby, Serjeant's Inn, Fleet Street.* Dec. 24.
- Stanton, George, Regent Street, St. James's, Westminster, Woollen Draper. *Edwards, Off. Ass.* : *Fox & Co., Basinghall Street.* Dec. 24.
- Spence, William, Dewsbury, York, Grocer. *Jaques & Co., Ely Place, Holborn : Greves, Dewsbury.* Dec. 24.
- Stocks, Isaac Clayton, Bradford, York, Stuff Manufacturer and Shopkeeper. *Jenkins & Co., New Inn : George, Bradford.* Dec. 24.
- Shuttleworth, Henry, Market Harborough, Leicestershire, and of the Light Pool Mills, Rodburgh, and King's Stanley, Gloucester, Pin Manufacturer. *Jackson, Off. Ass.* : *White & Co., Lincoln's Inn Fields.* Dec. 27.
- Senior, James, Lassell's Hall, Kirkheaton, York, Fancy Cloth Manufacturer, and Common Brewer. *Lever, King's Road, Bedford Row : Barker & Co., Huddersfield.* Jan. 10.
- Silver, James, Hatton Garden, Holborn, Silversmith. *Pennell, Off. Ass.* : *Rice, Verulam Buildings.* Jan. 14.
- Shuckard, George, Preston, Sussex, Brewer. *Attree & Co., Brighton : Sowton, Great James Street, Bedford Row.* Jan. 14.
- Scholefield, Edward, Watling Street, London, Warehouseman. *Lackington, Off. Ass.* : *Tunner & Co., Basing Lane.* Jan. 17.
- Scott, Joseph, Manchester, Paper Dealer. *Adlington & Co., Bedford Row : Street, Manchester.* Jan. 17.
- Trivett, Francis Thomas, Northumberland Place, Commercial Road East, Draper. *Lackington, Off. Ass.* : *Ashurst & Co., Cheapside.* Dec. 24.
- Turnbull, Thomas, Friday Street, Cheapside, Tavern Keeper. *Abagte, Off. Ass.* : *Wells, Charlotte Row, Mansion House.* Dec. 24.
- Thurlow, Robert, Southampton, Oil and Colour Merchant. *Mackey, Southampton : Bucknall & Co., Lincoln's Inn Fields.* Dec. 31.
- Thomas, William, Ystradgynlais, Brecon, Timber Merchant. *Bicknell & Co., Lincoln's Inn Fields : Vaughan & Co., Brecon.* Jan. 3.
- Tarte, James, Birmingham, Maltster, Cyder Merchant, Plated Wire Manufacturer, and Dealer in Metals. *Chaplin, Gray's Inn Square : Harrison, Birmingham.* Jan. 3.
- Underhill, Richard, and John Underhill, Plymouth, Devon, Linen Drapers. *Pennell, Off. Ass.* : *Burt, Aldermanbury.* Dec. 31.
- Walker, William, Nottingham, Silkman. *Enfield & Co., Nottingham : Currie & Co., Southampton Buildings, Chancery Lane.* Jan. 3.
- Wharton, Charles James Wilson, Liverpool, Provision Dealer. *Cornthwaite, Liverpool.* Jan. 7.
- Willacy, Thomas, St. Helen's Mills, Windle, Lancaster, [no trade gazetted]. *Taylor & Co., Bedford Row : Lowndes & Co., Liverpool.* Jan. 14.
- Wood, Samuel, Northampton, Ironmonger and Saddler. *Britten, Northampton : Messrs. Bower & Co., Lincoln's Inn Fields.* Jan. 14.
- Yellow, Rowland, Basinghall Street, Scrivener. *Edwards, Off. Ass.* : *Rush, Austin Friars.* Jan. 17.

## PRICES OF STOCKS.—Tuesday, 21st Jan. 1849.

Bank Stock, div. 7 per Cent. - - - - - 178 a 9  
 3 per Cent. Reduced, - - - - - 91 $\frac{1}{2}$  a  $\frac{1}{2}$  a  $\frac{1}{2}$  a  $\frac{1}{2}$   
 3 per Cent. Consols Annuities, - 91 a  $\frac{1}{2}$  a 90 $\frac{1}{2}$  a 1  
 3 $\frac{1}{2}$  per Cent. Reduced Annuities, - - - 99 $\frac{1}{2}$  a  $\frac{1}{2}$  a  $\frac{1}{2}$   
 New 3 $\frac{1}{2}$  per Cent. Annuities, - - 99 $\frac{1}{2}$  a  $\frac{1}{2}$  a 8 $\frac{1}{2}$  a 9  
 Long Annuities, expire 5th Jan. 1860 - 14 $\frac{1}{2}$  a 14  
 Annuities for 30 years, exp. 10th Oct. 1859, 13 $\frac{1}{2}$  a  $\frac{1}{2}$  a  $\frac{1}{2}$

India Stock, div. 10 $\frac{1}{2}$  per Cent. - - - - - 249 a  $\frac{1}{2}$   
 3 per Cent. Consols for Acct., 27th Feb. - 91 $\frac{1}{2}$  a  $\frac{1}{2}$   
 Exchequer Bills, 1000*l.* at 1 $\frac{1}{2}$ d.

Ditto. 12*s.* a 10*s.* a 14*s.* pm.  
 Ditto. 500*l.* Do. 12*s.* a 10*s.* a 14*s.* pm.  
 Ditto. Small, Do. 12*s.* a 10*s.* a 14*s.* pm.

# The Legal Observer.

SATURDAY, FEBRUARY 1, 1840.

"Quod magis ad nos  
pertinet, et nescire malum est, agitamus.

HORAT.

## THE PROGRESS OF LAW REFORM.

We shall now, according to our usual practice, take a general view of the state and prospects of Law Reform, and we shall be much mistaken, if, in spite of the apparent quiet in this respect, more be not done in the present year than in several preceding sessions.

And, first, we wish to say one word as to the privilege question. We have, as we have ever done, and shall continue to do, allowed both sides to be heard in these pages; but as the matter now assumes much of a party complexion, we shall content ourselves with the office of moderator. Each side has been most ably argued in the House of Commons, and if the friends of "privilege" can claim the Attorney General, the Solicitor General, Mr. Erle, and, perhaps, Sir Wm. Follett,<sup>a</sup> although he has not spoken for or voted recently on it, the friends "of law" rank on their side, Mr. Pemberton, Mr. Creswell, Serjeant Talfourd, Mr. Kelly, and Mr. Law.

Besides this important question now pending in the House of Commons, Lord John Russell has said that he will shortly introduce a bill for the establishment of County Courts. It is now under the consideration of the Lord Chancellor, and on his opinion being obtained with respect to certain points relating to it, it will be forthwith introduced into the House of Commons. Lord John Russell has also said that it is his intention shortly to bring in a bill for improving the

registration of voters. This will not only be a declaratory bill, settling certain disputed registration questions, but will go, as we understand, to the alteration of the present mode of revising votes by the fluctuating body of revising barristers, and the appointment of a permanent body, as in Scotland and Ireland. Returns have been ordered of the expense of the present system for several years past. Besides these measures, Mr. Serjeant Talfourd has renewed a notice as to his Copyright Bill, and Mr. Wakley has declared his intention, on its coming on, to move for a Select Committee on the whole subject of copyright, which, we think it very probable, will be agreed to by the House.

In the House of Lords the Copyhold Enfranchisement Bill has been referred, on the motion of Lord Brougham, to the following Select Committee:—The Lord Chancellor, Duke of Norfolk, Duke of Richmond, Marquis of Salisbury, Earl of Devon, Earl Shaftesbury, Bishop of Llandaff, Bishop of Exeter, Lord Redesdale, Lord Ellenborough, Lord Lyndhurst, Lord Wynford, Lord Brougham, Lord Duncannon, and Lord Hatherton. As it now stands, it is in all material points the same bill that was introduced into the House of Commons by Mr. Stewart last session, as first amended by the committee.<sup>b</sup> It contains the compulsory clauses, with a power to the lord and two-thirds of the tenants of any manor to except themselves from the operation of the bill by a petition to the commissioners. We understand that the Select Committee will proceed in the bill with all dispatch.

Besides these proceedings in Parliament, the Bankruptcy Commission is bringing its

<sup>a</sup> It is said that Sir William Follett, whatever he may think the law ought to be, is now of opinion that the construction of the Judges on the cases hitherto decided is the correct one.

<sup>b</sup> See the Bill, 17 L. O. 360, and the amendments, 419.

labours to a conclusion, and we soon expect to be in possession of their report, which, it is not unlikely, will be acted on in the present session.

## PRACTICAL POINTS OF GENERAL INTEREST.

### CUSTOM HOUSE OFFICER.

THINGS in actual use, as a horse upon which a man is riding, or an axe in the hands of a man who is cutting wood, and the like, are privileged from distress, in order to prevent a breach of the peace, which might be occasioned by an attempt to distrain them. 1 Inst. 47 a.; *Simpson v. Hartopp*, Willes, 54; *Story v. Robinson*, 6 T. R. 138. This rule is to some extent applicable to the following case, in which the right of a custom-house officer over the person is defined.

Trespass for seizing and carrying away certain goods of the plaintiff, to wit, three portfolios and one hundred drawings, &c.: plea, not guilty. At the trial at the Sussex Summer Assizes 1837, before Lord Denman, C. J., the following appeared to be the facts of the case. The plaintiff, a French youth, arrived at Brighton by the steam-boat one evening in September 1836, and as he was leaving the boat, accompanied by a friend who had gone on board to meet him, the defendants, who were custom-house officers, seized with some violence a portfolio which the plaintiff had under his arm, and which contained some school drawings and a few biscuits. They refused to restore it to him, but gave it back to him next morning. The notice of action given to the defendants was signed by "A. Pilcher, Solicitor," (who was the attorney conducting the suit) "acting in the behalf and as the procurator of the plaintiff;" and it was contended for the defendants that as an infant could not appoint an attorney, the notice was bad. His Lordship overruled the objection. The defendants then contended that the plaintiff must be nonsuited, for that drawings under the 3 & 4 W. 4. c. 66, schedule, were liable to forfeiture, and that the act complained of was a lawful seizure by the defendants. His Lordship was of this opinion, and directed a nonsuit, but required the jury to find what damages the plaintiff had sustained, who returned a verdict of one farthing. Lord Denman, C. J.—Where no fraud is attempted in concealing articles from the officers, I have no hesitation in

saying that, unless a previous demand is made by the officer, he is guilty of a trespass in taking the goods by force, but of a trespass to the person only. This action however, is brought for a trespass in taking the goods; and if the goods were liable to be seized, as I think they were, the mode of making the seizure cannot affect the liability of the defendants on this head. In *Story v. Robinson*, 6 T. R. 138, the taking of the plaintiff's horse was evidently stated in such a manner as to shew that the plaintiff was upon him, and therefore it involved a trespass to the person. *Littledale*, J.—The officers were justified in making the seizure; for on the evidence it appears that they were drawings, which brings them within the terms of the act, and no exception is made in favour of any particular kind. *Patteson*, J.—This is an action for taking goods only; and if any clause could be pointed out making a previous demand a condition precedent, no doubt an action would lie: but there is no such clause, and the general law is relied upon that there ought to be a previous demand. Supposing that to be so, yet, if the goods are forfeited, the act of taking of them cannot be invalidated by an excess or violence to the goods, but it affords a ground for an action of another kind. *Coleridge*, J., concurred. Rule discharged. *De Gondouin v. Lewis*, 2 P. & D. 283.

## EXCLUSIVE AUDIENCE OF THE SERJEANTS IN THE COURT OF COMMON PLEAS.

The question of the right, or privilege of the Serjeants, to practise in the Court of Common Pleas, to the exclusion of all other barristers, came again before the Court on the 20th January.

Mr. Newton observed, that the royal mandate of April 1834, which threw open the Court to the outer bar of England, was as binding as the writ, which was substantially a royal mandate, by the authority of which the Serjeants were invested with the privilege of pleading and audience in that Court. That Court itself had recognised the validity of the royal warrant of 1834, by ordering it to be entered on record; the Serjeants themselves had acquiesced in it for several years, and it was now too late for the Serjeants to turn round and ask the Judges of that Court to do that which they had failed in persuading either the Crown or the Legislature to do. He submitted to their Lordships that from the date of that royal mandate, every gentleman who had been called to the bar, had been called to the bar of that Court as much as of every other

court in the kingdom. He begged them to consider how unjust this proceeding would be to all those, and no doubt they were many, who had devoted themselves to studying the peculiar practice of this Court, which, until to day, had been open to them; and the practice of this court was so far peculiar as to require some degree of separate and peculiar study, whence, no doubt, in the first instance, had arisen the privileges of the Serjeants. He would not dilate upon the advantages or disadvantages to the public of closing this Court. It might be that the public derived great advantage from being confined to the learned Serjeants, and not having the liberty of selecting from the whole bar, those to whom they would entrust the advocacy of their causes in that Court; but the fact was, that the impression of the public was different upon the subject, as was proved by the great increase of business in that Court, since it has been thrown open. It had been said that if the royal mandate of 1834 were sustained, it must be on the principle that the Crown might open all the Courts of Westminster Hall to the public indiscriminately; but in answer to that, he begged to say that they were not to suppose that the Crown would do anything obviously improper and absurd; but supposing the Crown were to issue a warrant of that sort, and parties, whether barristers or not, were allowed to plead in the Courts for several years, he should like to know whether the judges thought that it would be a very easy matter to return to the old system of exclusion.

On the following day, January 21st,

The *Lord Chief Justice* gave the final decision of the Court.—This was a question as to the exclusive privileges of the Serjeants to plead and practise in the Court of Common Pleas, it having been contended that since the promulgation of the King's Warrant of Hilary Term, 1834, all barristers had an equal right with the Serjeants so to practise. They had been called upon by certain Serjeants to decide that question, and act upon their decision. If, when the warrant had been read, any one of the Serjeants had questioned its validity, the Court would have paused before it gave it effect, and would have decided the question deliberately, after hearing arguments. But, on the contrary, many of the Serjeants had accepted, at the hands of the Crown, the grace and favor of receiving more prominent rank, and the rest had allowed the matter to pass *sub silentio*. It was not surprising, then, that the Court offered no objection to the warrant, more especially as the Common Law Commissioners had recommended the opening of the Court, though to a limited extent. However, notwithstanding the acquiescence of the Serjeants, they thought it due both to the suitors and officers of the Court, now that they were called upon, to declare their opinion. The single point was, whether the Serjeants had, by the constitution and by law, held and enjoyed the exclusive privilege of practising in the Court of Common Pleas; for, if so, it was the opinion of the Court that they could not

be deprived of it by a royal warrant, or any other power short of the whole legislature. The antiquity of the Serjeants was as great as that of the Court itself, as was proved by all the text writers. Bracton, in the reign of Henry 3d, mentioned the fact; and it was also proved by records which were to be found in the Tower in the reign of Edward 1. They were called to their rank, too, by writ, the form of which was found in those ancient records; their oath of office had existed from the earliest times; and they were bound, as no other barristers were, to give due attendance for the service of the king's people. The Lord Commissioner Whitlock's speech to the newly created Serjeants was another authority which led them to the conclusion that the Serjeants possessed this exclusive right from time immemorial. The rights of the Serjeants and of Peers of the realm, stood on the same foundation, immemorial enjoyment; and that being so, they held that this right was still in existence, notwithstanding the royal warrant, and they were bound, therefore, to allow that right to be exercised. In order to secure the due administration of justice, it might be necessary, in progress of time, in extraordinary cases, to admit others to practise, as, for instance, Justice Littleton (Year Book of the 11th of Edward 4th) said, that if the Serjeants were all dead, then they must hear the apprentices; and it appeared to them that as parties had been induced, by the voluntary acquiescence of the Serjeants, to instruct barristers not of the degree of the coif, it would be unjust to withdraw the privilege in cases now pending. While, therefore, they allowed the Serjeants their exclusive privilege, it was with this reservation, that barristers not of that rank should be heard in the suits in which they were already engaged, until they were brought to a completion.

[We are glad that this decision of the Court,—qualified as it very justly is, with regard to existing business,—will restore the rights of the ancient order of Serjeants. An addition to that learned body, will, however, be requisite to meet the wants of the suitors of the Court. ED.]

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## POWER OF APPOINTMENT IN PURCHASE DEEDS.

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*To the Editor of the Legal Observer.*

Sir,

In the course of my practice in conveyancing, I have never yet been able to convince myself of the propriety of the mode which has been adopted of late years, and now very generally prevails, of preparing purchase deeds of fee-simple lands by power of appointment and limitation of uses,—at least to the extent to which it is carried. The better to explain my meaning I shall give a brief abstract of a modern title.

1st & 2d Jan. 1800.—INDENTURES OF LEASE  
T 2

and Release—the latter between *A. B.* of the first part; *C. D.* (a purchaser) of the second part; and *E. F.* (a trustee nominated by said *C. D.*) of the third part: It is WITNESSED, that in consideration, &c. said *A. B.* grants, bargains, sells, releases, &c. to said *C. D.* (in his actual possession, &c.) and his heirs,

ALL, &c.

To HOLD to said *C. D.* and his heirs, To such uses, &c. as he should by deed or will appoint; remainder to the use of said *C. D.* and his assigns for life; remainder to the use of said *E. F.* for the life of said *C. D.*, In trust for said *C. D.*; and to the intent that no wife of said *C. D.* should be entitled to dower; remainder to the use of said *C. D.*, his heirs and assigns for ever.

1st & 2d February, 1820.—INDENTURES of Lease, Appointment, and Release—the latter between said *C. D.* of the first part; said *E. F.* of the second part; *G. H.* (a purchaser) of the third part; and *J. K.* (a trustee nominated by said *G. H.*) of the fourth part:

*Recites the Deeds of 1800.*

IT IS WITNESSED, that in consideration, &c. said *C. D.*, by virtue of the power contained in the recited deed, and of all other powers, &c. appoints the premises To the uses thereafter declared:

AND IT IS FURTHER WITNESSED, that in consideration, &c. said *E. F.* (by direction of said *C. D.*) releases, &c., and said *C. D.* grants, bargains, sells, releases, &c. to said *G. H.* (in his possession, &c.) and his heirs,

ALL said premises:

To HOLD to said *G. H.* and his heirs, To such uses, &c. as he should by deed or will appoint; remainder to the use of said *G. H.* and his assigns for life; with subsequent remainders similar to those contained in the deed of 1800.

1st & 2d January, 1840.—INDENTURES of Lease, Appointment, and Release—the latter between said *G. H.* of the first part; said *J. K.* of the second part; *L. M.* (a purchaser) of the third part; and *N. O.* (a trustee nominated by said *L. M.*) of the fourth part:

*Recites the Deeds of 1820.*

IT IS WITNESSED, that in consideration, &c. said *G. H.*, by virtue of the power contained in the last recited deed, and of all other powers, &c. appoints the premises to the uses thereafter declared:

AND IT IS FURTHER WITNESSED, that in consideration, &c. said *J. K.* (by direction of said *G. H.*) releases, &c., and said *G. H.* grants, bargains, sells, releases, &c. to said *L. M.* (in his possession, &c.) and his heirs,

ALL said premises:

To HOLD to said *L. M.* and his heirs, To such uses, &c. [exactly

similar to those expressed in the two preceding deeds.]

Now, to what purpose is this power of appointment thus introduced from time to time? It is never acted upon, at least it is never trusted to and relied upon, because, from the possibility of its being defective either in its inception, or in its subsequent transition (as it is said) the legal ownership of the vendor and his trustee is always brought into aid; and thus the benefits to be derived from this mode of conveyance by appointment alone are lost sight of and defeated. Those benefits are, first, that by the exercise of the power alone, the necessity of the concurrence of the trustee (which is sometimes difficult to procure) is obviated; and secondly, that the necessity and consequent expence of the lease for a year are avoided. For as to the object of preventing the dower of the wife of the vendee from attaching, that is effected not so certainly by the power of appointment, as by the severance of the freehold from the inheritance by means of the subsequent limitations. But if what I have stated already were the only evils attendant on the system, they would not be so great:—deeds of conveyance might be unnecessarily lengthened, and needless expence might be created, and yet those on whom the preparation of deeds devolves might look on with complacency, since the learned will have it so.

But there is yet a further and greater objection to this mode of transfer, and that is that none of the deeds thus referring to a previous power of appointment can ever be regarded as the root of a title, because it is a rule in the investigation of titles, that if any deed in an abstract refers to another deed, it involves the purchaser with notice of all the contents of the deed referred to, and consequently, and very properly, an abstract of that deed is called for;—the latter deed is found to refer back to an antecedent deed in a similar manner, which must also be produced, and so backwards *ad infinitum* so long as the present fashion has existed. It is obvious how very much abstracts may be lengthened by this process of entangling one deed with another. This may be more familiarly illustrated by the abstract which I have given. The deeds of 1st and 2d January 1800 form a very proper root of the title now, but unhappily they must continue to be the root for at least forty years to come, and for as many more years as the present mode of conveyance shall henceforth be resorted to with regard to these lands; and consequently involve the necessity of an abstract, and production of all the deeds that might have been made during those first forty years: whereas if the conveyance just made had been a mere simple feoffment with livery of seisin, made by *G. H.* alone, without reference to any previous deed, it would have been a good root of title forty years hence. I say this with submission, and shall only add that if any of your learned readers would point out whether this latter suggestion is open to any substantial objection, I should feel obliged.

As the chief objects of the mode of convey-

ace on which I have commented, is to bar dower, no doubt the practice will cease when the present generation of married women, who were married before the 2d of January 1834, shall have passed away.

I would not have it inferred, either from the abstract that I have given, or from anything that I have said, that I offer any decided opinion as to the length of time that is sufficient to constitute a marketable title. I am aware, on the one hand, that in a late case *Cotterell v. Watkins*, 1 Beavan 361, it was laid down by counsel (Mr. Pemberton) without disapprobation from the court, that a forty years' title was now sufficient: and on the other hand, of what is said by Sir Edward Sugden on the subject in his new edition (10th) of the Law of Vendors and Purchasers v. 2, p. 135, 139. He concludes by saying that in practice a convenient rule, no doubt, will be adopted, and this, taking a middle course, will perhaps be to furnish a fifty years' title in ordinary cases; there will be but few titles disturbed under a clear title for half a century, where the property has undergone the usual transfers upon sales and mortgages, and the possession has gone along with the title.

A COUNTRY CONVEYANCER.

## THE STUDENT'S CORNER.

### CONSTRUCTION OF THE PAWBROKERS' ACT.

To the Editor of the Legal Observer.

Sir,

A CASE of great importance on the Construction of the Pawnbrokers' Act, 39 & 40 G. 3, c. 99, has recently engrossed my attention, and I communicate the particulars to you, in order to solicit your or your correspondents' opinion on the subject.

*A.* pledged an article with *B.*, a pawnbroker, for a sum less than 10s. (viz: 4s.) on the 15th November, 1838; and on 17th November last year, he applied to redeem it, and tendered the principal and lawful interest, (which according to a case of *Rex v. Goodburn*, A. & E. (also reported in L. O.) is 10*1/2*d., that case deciding that a pawnbroker is not justified in charging more than 20 per cent. where the sum is an intermediate sum, as mentioned in the act, (not to be calculated by the month, but by the year;) but *B.* refused to deliver the pledge unless 1s. 1d. was paid as interest, (which pawnbrokers are in the habit of charging), and upon *A.* threatening an application to the magistrates for the restoration of the property, *B.* contended that the property was his own, and absolutely refused to deliver the pledge to *A.*, even if the interest he demanded was paid, on the ground that twelve months had elapsed from the time of pledging. It should be observed, that at first, *B.* offered to re-deliver the pledge on payment of the interest he demanded, which is considerably more than the law allows.

On *B.*'s refusal to restore the property, *A.* obtained a summons against *B.* A solicitor

on his behalf appeared, and contended that *A.* had no lawful cause to complain, inasmuch as he had no interest in or title to the property in question, the time for redemption allowed by the 17th sect. of the act having expired. The section says, "all goods which shall be pawned," &c. "shall be deemed forfeited at the expiration of one whole year" from the time of pawning; and he insisted that the direction in the 20th section did not apply to the present case, inasmuch as that section only alluded to cases where the amount pledged was 10s. or upwards.

On the other side, *A.*'s solicitor contended that the present case must be ruled by the principle established by the Court of Queen's Bench in *Walter v. Smith*, 5 B. & Ald. 439, in which Lord Tenterden, then C. J. Abbott, says, "I am of opinion that if the pledge be not redeemed at the expiration of a year and a day, the pawnbroker has a right to expose it to sale as soon as he can consistently with the provisions of the Act, but at any time before the sale has actually taken place, the owner of the goods has a right to his property. In the present case it appears that the pawnbroker has not exercised the power given to him by law (according to Lord Tenterden's opinion,) but on the contrary he was willing at first to re-deliver the pledge on payment of the interest he charged, but finding that *A.* was not to be duped in that manner, he altogether refused to deliver the pledge on any terms, and therefore without the slightest doubt it must be considered that *B.* had the property in his possession at the time when *A.* applied to redeem it and tendered the principal lent, and lawful interest.

*B.*'s solicitor, in reply, answered that the judgment of C. J. Abbott did not apply to the present case, inasmuch as the C. J. grounds his opinion on the 20th section. "It is manifest," he says, "from the other provisions of the act," alluding to the 20th sec., which only applies where "the amount is 10s. or upwards." Here the amount is 4s., and therefore can have no application. The case must be decided by the 17th section, the words of which being too clear for doubt, he submitted that the complaint must be dismissed with costs.

The magistrates agreed with *B.*'s attorney in his construction of the act, and thought that the case must be decided by the 17th section, which declares all goods forfeited at the expiration of one year; and they were of opinion that the opinion of Lord Tenterden and the other Judges in *Walter v. Smith* was founded on the 20th section, which only applied to 10s. or upwards; and, acting under this view, they dismissed the complaint.

After a mature consideration of the words of the act, and the judgment delivered by four of the most learned Judges that ever adorned the Bench, I consider the above point very doubtful, and should feel particularly indebted to you, or your correspondents, for their assistance. In return, I may be commanded whenever any of your correspondents require assistance.

W. J.

## NEW RULE FOR THE ADMISSION OF ATTORNEYS IN THE EXCHE- QUER.

*Hilary Term, 3 Vict.*

It is ordered, that every person who shall intend to apply for admission as an attorney of this Court, and who shall not have been admitted an attorney and solicitor of any other Court, shall, (in addition to the notices to be given to the examiners, masters, &c. as required by a Rule of Hilary Term, 6 William IV, 1836, read in all the Courts) for the space of one full term previous to the term in which he shall apply to be admitted, cause his name and place or places of abode for the last preceding twelve months, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articled, written in legible characters, to be affixed in the Exchequer Office of Pleas, in such place as public notices are usually affixed, and also enter or cause to be entered in two books to be kept for the purpose, one at the chambers of the Lord Chief Baron, and the other at the chambers of the other Barons of this Court, his name and place or places of abode for the last preceding twelve months, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articled.

(Signed)

ABINGER,  
J. PARKE.  
E. H. ALDERSON.  
J. GURNEY.  
R. M. ROLFE.

Read in Court, Jan.  
29, 1840.

STEPHEN RICHARDS,  
*Master.*

## RESULT OF THE HILARY TERM EXAMINATION.

We are informed that 119 candidates attended at the last examination, and that 4 only were unsuccessful. As usual, a considerable number were unprepared with their testimonials, and consequently could not be examined. We understand that the examination was deemed the best that has hitherto taken place. The comparative severity which was exercised in Michaelmas Term appears to have produced a good effect. It is now four years since the rules were made, and we recommend those who are preparing for the examination to make good use of their time. Even the three

months which will elapse before the Easter Term Examination, which cannot take place till the 4th May, (the term ending on the 18th) will enable the diligent student to make up for much lost time. He will recollect that in Common Law and Equity he must shew a considerable degree of proficiency, and the next department in importance is that of Conveyancing, though he has the choice also of Bankruptcy and Criminal Law.

## CHANCERY REFORM.

The following is a copy of the statements contained in a petition to the House of Commons from the Attorneys and Solicitors practising in the city of Exeter and neighbourhood:—

That the petitioners and their clients, and the country at large, are suffering to an enormous extent by the very great arrear of business in the Court of Chancery, so that when a cause is ripe for hearing, a delay of about two years must accrue before either of the present Judges will have an opportunity to try it, to the great hindrance (amounting almost to a denial) of justice.

The petitioners have viewed with much disappointment the discussions of learned men connected with the Court of Chancery, on the remedies for this great evil, in which the want of concord appears to render any relief hopeless.

The petitioners beg to suggest that there are three men of profound legal ability, and possessing full vigour of intellect, at present receiving from the country large sums as pensions, for having filled, each for a short time, the office of Lord Chancellor,—two of them in England and one in Ireland.

The petitioners beg to suggest that until some plan can be defined for permanently administering justice in the Court of Chancery more satisfactorily than at present, that these three learned men might be requested to preside over Courts for the purpose of discharging the large amount of arrears with which the present Judges are encumbered.

The petitioners beg further to suggest that such three Judges might sit separately, and hear such causes and motions as are now heard by the Vice Chancellor and the Master of the Rolls, and might also at stated times sit together and hear appeals such as are now heard by the Lord Chancellor; and that as there are already two sets of Courts, no inconvenience would be experienced by the operation of this temporary remedy; but an inestimable benefit would be conferred on the country in the administration of this important branch of its judicature.

## SELECTIONS FROM CORRESPONDENCE.

### ON JUDGE'S ORDERS TO STAY PROCEEDINGS.

To the Editor of the Legal Observer.

Sir,

KNOWING the interest you take in all matters relating to the profession, I venture to trouble you with a few remarks on this subject. And I may first observe, that it is the constant practice among attorneys, where a client has no defence to an action, and unable at the time to pay, to give a judge's order to stay upon payment of the debt and costs on a certain day therein mentioned, or in default, that the plaintiff shall be at liberty to sign final judgment, and issue execution for the amount. That such a practice is very convenient no one can deny, it saving the expense of a cognovit, and if the debt be above 26*l.*, the stamp. But Sir, convenient as this practice is, I was considerably alarmed the other day, upon hearing that a motion had been made a short time since to the Court of Exchequer to set aside one of these said orders, when the judges one and all declared that the same was illegal, and were surprised that such an order was made, in fact, would hardly believe it, and their lordships accordingly set the order aside, and said, the plaintiff might sign judgment the next day, it being no stay of proceedings, and consequently out of the power of a judge to make it.

Yet these orders are continually being made, and should they be set aside, would perhaps be the ruin of those who gave them.

Perhaps some of your numerous correspondents may be able to inform me of the name of this case, for should it be correct, I shall hesitate in future to consent to another order.

—

J. A.

### NON-PAYMENT OF COUNTRY AGENTS.

Sir,

Under the above title, a letter appears in the number of last week of your Journal, p. 33*t.*, and signed by "A Constant Reader."

The remedy of the agent is clear, and it would be by action against the attorney by whom he was employed. I think the following authorities will remove the difficulty of your correspondent. *Scrace v. Whittington*, 2 B. & Cres. 11; 3 D. & R. 195, S. C.

W. B. D.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

**HUSBAND AND WIFE.—SEPARATE ESTATE.—RESTRAINT ON ALIENATION.—JURISDICTION EXTENDED.\***

*Gifts by will, in trust (after a life interest) for an unmarried woman, during her life, for her separate use, independent of any husband she may marry, and as to some of*

*the gifts, with a prohibition against anticipation, but without words of gift over on anticipation. The legatee took a vested interest in some of the gifts while she was single, and all of them took effect in possession after her marriage. Held, that the legatee's separate estate in the bequests, as well without as with the clause against anticipation, took effect on her subsequent marriage, and continued during that coverture; that she might at any time dispose of the gifts to her separate use, independent of her husband, and of those with the clause against anticipation after his death only, that while *discovered* her separate estate was suspended, but would again become effectual with the like restrictions on her next marriage, if not alienated during her *discovery*.*

*Seemly that *Newton v. Reid*, 4 Sim. 141, *Brown v. Pocock*, 5 Sim. 663, and the dictum in *Massey v. Parker*, 2 Myl. & K. 274, and other cases of that class, are overruled.*

Two cases, *Scarborough v. Borman*, and *Tullett v. Armstrong*, were brought before the Lord Chancellor in January 1839, upon appeal from the Master of the Rolls. The latter case was reported in 17 Leg. Obs. p. 26, and both were subsequently reported in 1 Beavan, pp. 1 and 34.<sup>a</sup> The case of *Scarborough v. Borman* was this: A testator bequeathed a sum of money on trust to vest the same in securities, and pay the interest to his daughter, then a widow, during her life, for her sole, separate, and exclusive benefit, without being subject to the debts or control of any future husband. The legatee married again after the testator's death, without any settlement of the fund so bequeathed; and her husband filed a bill against her and the trustees, praying to be entitled in right of his wife to the interest of the said sum given by her father's will. The defendants put in a demurrer to the bill, and the Master of the Rolls allowed the same, conceiving that the point raised was within his judgment in *Tullett v. Armstrong*.<sup>b</sup> The facts of that case were these: A testator gave and devised to trustees all his freehold, copyhold, and leasehold estates, and all his personal estate, in trust for his wife for life, and after her death he devised the freehold estate to his daughter, her heirs and assigns, and a copyhold estate to her and his two grand-daughters, equally between them, during their joint and several lives, as tenants in common, and in such manner that none of them should anticipate &c. these respective life estates, and that no husband or husbands of any of them should have any right or control over their interests respectively, nor should the same be subject to the debts or engagements of any such husband; and the testator gave, after the death of his wife, to M. A. T., one of the grand-

\* There is also a report of *Tullett v. Armstrong*, on motion for a receiver, in 12 Leg. Obs. p. 404-5; and 1 Keen, 428.

<sup>a</sup> 1 Beavan 17, and 17 Leg. Obs. 26.

\* This important case occupies so great a part of the present number, that we have no room for any observations as to it. We shall give them in our next number.

daughters, certain other copyhold and also leasehold premises, to hold to her and her assigns during her life; and he declared that the said devises and bequests to his granddaughters were intended by him to be to them free from the debts and control of any husband, and were to be taken, received, and enjoyed by them respectively, as if they were sole and unmarried. After the death of the testator, his daughter made her will, and devised the freehold estate given to her by her father's will, after the death of her mother, who was then living, to trustees, to pay the rents to the said *M. A. T.* her niece, during her life, in such manner as that she should not sell or otherwise anticipate her life interest therein, and that the same should not be subject to the debts or control of any husband she might marry, her own receipts to be sufficient discharges to the trustees for the rents, &c. Thus, this last gift, and the first gift to *M. A. T.* under the grandfather's will were guarded by words in restraint of alienation, but there was no gift over on her attempting to anticipate or alienate them. The second gift under the first will was not accompanied with the restraint on alienation; all the gifts were to be free from the debts and control of any husband, and all were to go over on her death. *M. A. T.* married William Armstrong after the testator's death, and in the lifetime of the testatrix, and of the widow; and on the death of the survivor of them in 1830, all the gifts to her under both wills took effect in possession; and in 1832 she and her said husband by indentures granted an annuity to the plaintiff in consideration of 300*l.* paid by him to the husband, and Mrs. Armstrong appointed the said freehold, copyhold, and leasehold premises to the plaintiff for securing the annuity &c. Mr. Armstrong took the benefit of the act for relief of insolvent debtors in 1835, and the annuity being in arrear, the plaintiff filed his bill to obtain payment out of the property so bequeathed to Mrs. Armstrong, and appointed by her to secure payment of the annuity. The *Master of the Rolls*, before whom the cause came to be heard, held, by his judgment before referred to, that the plaintiff acquired no right, under his securities, to the gifts limited by the wills to the separate use of Mrs. Armstrong without power of alienation; but as to the gift by the first will for her separate use, without any words prohibiting alienation, the plaintiff was entitled to the relief he prayed by virtue of her appointment.

The appeal from that judgment, though delivered in *Tullett v. Armstrong*, was also applicable to *Scarborough v. Borman*, was argued on the 21st, 22d, 23d and 24th of January 1839, by Mr. Wigram and Mr. Jemmett for the appellant in the latter case, and by Mr. Tinney and Mr. Sidebottom for the respondents; by Sir William Horne, Mr. Teed, and Mr. S. Clarke for the appellant *Tullett*; by Mr. Wray for Mr. and Mrs. Armstrong, and by other counsel for trustees and other parties to the causes. It was understood in the course of the arguments, that Mr. Tullett's counsel gave

up his claim against the gift under the second will, to the separate use of Mrs. Armstrong, that having vested in interest as well as possession during her coverture. Mr. Wray in answer to these arguments, confined his own to the maintenance of the validity of the clause against anticipation, and on that point he prayed in aid the arguments not only for the respondents in *Scarborough v. Borman*, but also those for the plaintiff there, which admitted that if the prohibition against anticipation had accompanied the gift to Mrs. Scarborough, her husband could not be entitled to the interest of the sum left to her. A vast number of cases were cited.

*The Lord Chancellor* at the close of the arguments.—The decisions on this subject cannot be reconciled; they cannot remain as they are. If separate estate is to be supported at all, it must be supported on both branches. To take away the restraint on alienation, and leave the estate to the separate use only, would be leaving the woman in as bad a state as if she had no limitation to her separate use. I do not see how the *Vice Chancellor's* view can be supported. I should feel anxious to hold the law as the *Master of the Rolls* has put it. This case is extremely beneficial to all parties; but how that is to be effected consistently with the authorities, is the difficulty I feel. We know nothing of separate use except as anticipating future coverture.

*The Lord Chancellor*.—The question in this case is as to the clause against anticipation, but I agree with the *Master of the Rolls* in thinking it not only embraces the question of separate estate, which has been the subject of much discussion, but that these two questions are identical as to the principles which must regulate the decisions upon them; by which I mean, if the case be of a separate estate, without power of anticipation, it must exist with that qualification, if it exist at all; and there is no principle upon which it can be held, that the separate estate operates during a coverture subsequent to the gift; but the provision against anticipation with which the gift was qualified, does not. It is obvious that such a rule would in practice defeat the intention of the donor, and in many cases render the provision which he has made for the protection of the object of his bounty, the means and instrument of depriving her of it. When once it was established that a married woman might have and enjoy separate estate, and dispose of it as a *seme sole*, it was found that to secure to her the desired protection against the marital right, it was necessary to qualify and fetter the gift of the separate estate by prohibiting anticipation. The power to do this, was established by authority not now to be questioned; but which could only have been founded upon the power of this Court to model and qualify an interest in property which it had itself created, without regard to those rules which the law has established for regulating the enjoyment of property in other cases. If therefore any rule were now to be adopted, by which the separate estate could in

any case be divested of the protection of the clause against anticipation, it would in such cases defeat the object of the power so assumed, and a *feme covert* with separate estate, not protected by a clause against anticipation, would be in a less secure situation, than if the property had been held for her simply upon trust. In the latter case, this Court with the assistance of the trustees, could protect her; in the other, her sole dependance would necessarily be upon the husband not exercising his influence, which if exercised, would lead to the destruction of her separate estate. In case of a gift of separate estate, with a clause against anticipation, the donor supposes that he has effectually guarded his bounty, and protected the wife against such influence or control. Upon what principle then can this Court subject her to it, and by so doing defeat his purpose, and completely alter the character and security of his gift? The separate estate and the prohibition against anticipation, are both creatures of equity, and equally inconsistent with the ordinary rules of property. The one is a necessary qualification of the other; and the two must stand or fall together. Indeed I do not find any allusion in any case to the possibility of the one surviving the other until after the discussion, as to the continuing of the separate estate, through a subsequent coverture had commenced. In my review of the cases, upon which I am about to enter, I shall assume that there is no ground for the attempt which has been made in argument to separate the two. In a case of so much importance, and which has excited so much interest, I have thought it my duty not only to consider every case which has been referred to in argument, but to endeavour to obtain such other information as was within my reach. I will first examine those cases which are supposed to support the proposition that the absolute interest of the woman, which she unquestionably possesses in property given for her separate use, though with a prohibition against anticipation, up to the moment of her subsequent marriage, becomes subject to all the qualifications and restrictions of the gift upon such marriage. If Sir *Edward Turner's* case be correctly stated in *Tudor v. Samyne*,<sup>c</sup> in 2 Vernon, which differs from the report of it in 1 Vernon,<sup>d</sup> and if *Tudor v. Samyne* be itself accurately reported, that gives an instance of property settled to the separate use of a woman, being alienable by an after-taken husband. I do not, however, think that either case is of any value on the present question; they are of too early a date; the accuracy of the reports cannot be depended upon, and the point does not appear to have been argued, and cannot be said to have been decided. Although no cases appear to have occurred, until late times, in which the question was directly raised, yet decisions took place, which necessarily led to the consideration of it. *Brandon v. Robinson*,<sup>e</sup> and other cases having brought to view that all restrictions inconsis-

tent with the nature of the estate given are void in gifts to men, the case of similar gifts to females soon occurred. Sir *William Grant* in *Jones v. Salter*, and Sir *Thomas Plumer* in *Barton v. Briscoe*,<sup>f</sup> held, that property settled on a married woman with a clause against anticipation, might upon her becoming discovert, be absolutely disposed of by her. The decision in *Woodmeston v. Walker*,<sup>g</sup> proceeded upon the same principle; but it has a more important application to the present case, because Sir *John Leach* had refused to consider a single woman, to whom an annuity had been given for her separate use, with a prohibition against anticipation, as having dominion over the fund, because the provision contemplated a future marriage. Against this judgment Sir *Edward Sugden*, on appeal to Lord *Brougham*, argued "it may be said, that as the words of this proviso point to any future coverture, the restriction will attach upon the plaintiff the instant she marries a second husband, and that the court, looking to that contingency, will protect executors in their refusal to transfer the fund; for such a proposition, however, no authority can be adduced. The language of the judgment in *Barton v. Briscoe*, is directly opposed to it, and the existence of a desultory and shifting fetter of that description is repugnant to legal principle, and would be attended with much practical inconvenience." Against this argument the practice of conveyancers, and the necessity of affording to parents the means of securing property for their daughters in the event of their subsequent marriage, was urged, but in vain. Lord *Brougham* declared the plaintiff entitled to an absolute interest in the property, after thus expressing himself. "It was said that the woman must have the property at her own disposal till she married, and that when that event happened, a sort of postponed fetter might attach,—a fetter which would fall off upon her husband's death, and be again imposed should she enter into a second marriage. That would be a strange and anomalous species of estate; nor is it very easy to conceive by what process or contrivance it could be effectually created unless, perhaps, by annexing to the gift a limitation over to trustees to preserve it for the woman during the successive covertures." —The decision in that case only confirmed the judgment of Sir *Thomas Plumer* in *Barton v. Briscoe*, because the party claiming the fund was at that time discovert; but the observations of Lord *Brougham* assume that a marriage would not bring, what he calls, the postponed fetter into operation, except possibly by the means he suggests. It does not appear from the report, that *Newton v. Reid*<sup>h</sup> was cited, though it had been decided in December, 1830, which may be accounted for by what is stated in the argument in *Brown v. Pocock*<sup>h</sup> that *Newton v. Reid* had been then recently reported. In that case a father had directed his trustees to purchase an annuity for his daugh-

<sup>c</sup> p. 270.<sup>d</sup> p. 7.<sup>e</sup> 18 Ves. 429.<sup>f</sup> 2 Russ. & Myl. 208.    <sup>g</sup> Jacob 603.<sup>g</sup> 4 Sim. 141.<sup>h</sup> 2 Russ. & Myl. 212.

ter, for her separate use, with a prohibition against anticipation; the daughter was unmarried at her father's death, but having afterwards married, she and her husband joined in assigning the fund to a creditor of the husband, and both joined in a petition for the transfer of the fund according to the assignment, which the Vice Chancellor ordered, holding "that the annuity not being given over upon alienation, the restrictions are void." This order was made without argument, and it would not be reasonable, therefore, to consider it as an expression of the deliberate opinion of the judge, if it had not afterwards been recognized and approved. In *Brown v. Pacock*, 2 Myl. & K. 189, and 2 Russ. & Myl. 210, where the case on appeal is reported, Sir John Leach and Lord Brougham took the same view of the question as they had respectively done in *Woodmeston v. Walker*, the circumstances of the case being the same; and Lord Brougham commented upon *Newton v. Reid*, saying that it was a stronger case than the one before him, but did not express any disapprobation of it. The second case of *Brown v. Pacock*<sup>l</sup> was the same as *Newton v. Reid*, the assignment having been after the marriage. I now come to the case of *Massey v. Parker*,<sup>k</sup> which excited an interest to which it was very little entitled, either from the authority of the judge, or any novelty in the doctrine. What was said on the subject in that case has been represented as extra-judicial by some, and as a decision upon the point by others. It certainly was not extra-judicial, because it was one of the questions directly in issue, and upon which the decision might have been rested; but it is at the same time true that there being another point in the case, sufficient, in my opinion, to support the judgment I pronounced, it cannot be said that the point in question was that upon which the judgment was founded; and for that reason less attention was, perhaps, paid to the various considerations belonging to it than it was entitled to, and less than it probably would have received if the rights of the parties had depended on the determination of it; and I must observe, that although the cases favourable to the proposition for the prohibition against alienation, were very fully brought before me in the argument, none of those which are most important on the other side were referred to. It had at that time been decided that it was equally incompetent to affix to a gift to a single woman, as to a man, restrictions inconsistent with the estate given; and that in such cases the woman before marriage, or upon becoming covert by her husband's death, had the absolute property in the fund;—not, in the case of either male or female, that there was a power of relieving the property from the qualifications and restrictions imposed upon it; but that such qualifications and restrictions were void, and the title to the property absolute. In *Woodmeston v. Walker*

it had been assumed that such qualifications and restrictions would be equally void after a subsequent marriage, which assumption had in *Newton v. Reid* been carried into effect by directing a transfer of the fund upon the application of the husband and wife. It certainly did not occur to me, as it does not appear to have, at that time, occurred to any one else, that the separate estate could survive to a subsequent coverture, stripped of the protection which the prohibition against anticipation gives to it, and which alone, in many cases, prevents it from being an evil rather than a benefit to the wife. I cannot, therefore, think there was any inaccuracy in saying that I must consider the point as settled by authority. Whether the expression of approbation of the doctrine so established was well founded, is what I am to consider in the present case. That the expressions used in *Massey v. Parker* were not considered as promulgating any new doctrine may be inferred from the case of *Malcolm v. O'Cullaghan*.<sup>l</sup> In that case property had been settled to the separate use of a married woman, as against the then existing or any future husband, with a prohibition against anticipation. The husband died and she married a second husband, and they together applied for payment of the fund; *Barton v. Briscoe*; *Newton v. Reid*; *Woodmeston v. Walker*, and *Massey v. Parker*, were cited; and the Vice Chancellor ordered the payment; saying, the general rule of law to be deduced from those cases was, that where a settlement to the separate use of the wife was made with a view to an existing marriage, or a marriage then in contemplation, it was competent for the wife, when she became covert from that marriage, to rid the fund of the fetter imposed on it; and if such a limitation was made by a will, or otherwise, in favour of a *feme sole*, who had not taken upon herself a state of coverture, but who was come of full age and able to act for herself prior to coverture, she was entitled to call for a transfer of the settled fund; and that the only means of preventing such party from her right to have the fund paid over, was to insert in the settlement or will which created such a trust, a gift over in the event of alienation. No distinction is there taken between the separate estate and the prohibition against anticipation, or between the doctrine in *Massey v. Parker*, and the other cases. The decision in *Jackson v. Freeth*,<sup>m</sup> is even more pointed, because *Massey v. Parker* does not appear to have been referred to; but on the authority of *Newton v. Reid*, sanctioned by Lord Brougham, the Vice Chancellor decreed payment of the fund to an assignee of the husband and wife, saying, that except as to the marriage, with reference to which the settlement containing the clause against anticipation was made, the clause was to be taken as a nullity; but that if such a clause applied to a woman before coverture, it was bad altogether, and if to a woman under

<sup>l</sup> 5 Sim. 663.

<sup>k</sup> 2 Myl. & K. 174.; S. C. 9 Leg. Obs. 203.

<sup>l</sup> 5 Law Jour. 137.

<sup>m</sup> 5 Law Jour. 143.

coverture, it was void when the coverture ceased. It is indeed, true, that in *Benson v. Benson*,<sup>a</sup> although there was no decision upon the subject, there were some observations of the Vice Chancellor, which seemed to aim at a distinction between the separate estate and the clause against anticipation; and in *Davies v. Thornycroft*,<sup>b</sup> the Vice Chancellor expresses a distinct opinion, that although the prohibition against anticipation cannot operate during a subsequent coverture, the property may maintain its quality of separate estate. I have before said that I concur with the *Master of the Rolls*, in thinking that this doctrine cannot be maintained. In tracing the fluctuations of opinions which have existed upon questions relating to the separate estate of married women, it cannot but be observed that so late as the cases of *Woodmeston v. Walker*, and *Brown v. Pocock*, Sir John Leach was of opinion that in order to preserve to a woman the benefit of a gift for her separate use without anticipation, she ought not to be enabled to dispose of the property while single or dis-covert; the contrary is now clearly established, but the power of providing for daughters is thereby greatly impaired; observations, therefore, which may have fallen from judges, before it was made apparent that the separate use of a married woman in her property being only a creature of equity, created for her protection, cannot exist so as to affect the power of a single woman, must be received with some qualification. The case of *Beable v. Dodd*,<sup>c</sup> was much relied upon for the respondent in this case, and, strange as it may appear, that a decision of common law judges, in an action of replevin should be applicable in a case of separate estate, which is said to be a creature of equity, it is certainly entitled to much consideration. It is, however, to be observed, that the whole of the argument and judgment turned upon the construction of the instruments, and that there was in that case an express power reserved to the woman; and Mr. Justice Lawrence in his argument for the defendant, said, "cases of trust created by the husband for the separate use of his wife are very different from the present case of a devise generally to a woman, notwithstanding her coverture."

In the earlier case of *Carleton v. The Earl of Dorset*,<sup>d</sup> there was an express power, and in *Edmonds v. Dennington* there cited, it does not appear by what means the power of the wife was secured to her.<sup>e</sup> In *Bennet v. Davie*,<sup>f</sup> the devisee was married at the time of the gift, and the only question arose from there being no trustee appointed. The case of *The Countess of Strathmore v. Bowers*<sup>g</sup> has been cited as conclusive of Lord Thurlow's opinion; but on referring to the report of the same case on the first hearing,<sup>h</sup> it will be found that the set-

tlement was upon trust to pay the rent &c. to such uses as she should, whether sole or covert, appoint. In *Acton v. White*,<sup>i</sup> the only question was whether the words used amounted to a prohibition against alienation. The expressions of Sir John Leach, therefore, that the intention was only to exclude the marital rights of any present or after-taken husband, cannot be considered as of any weight on this subject, which was not before him. The Vice Chancellor in *Davies v. Thornycroft*, considers the case of *Simson v. Jones*,<sup>j</sup> as decisive; but upon examining the case it will be observed that the wife never had any power of disposing of the property, and she was an infant when she married, and the property was to vest in her upon marriage under twenty-one, and then to be for her separate use; the estate and the provision for the separate use took effect at the same moment and by the same act. If the observations of Sir John Leach are construed with reference to the case before him, they do not appear to have any application to the present case. *Anderson v. Anderson*<sup>k</sup> may, from its circumstances be the most important of all the cases in favor of the separate estate, being in force throughout a subsequent coverture, but unfortunately, there is no report of the grounds of the judgment of either Sir John Leach or Lord Eldon; and there were facts in that case which may have been relied on by those learned judges which have no application to the general question. There had been a negotiation before the marriage respecting the property; the husband admitted that he had promised not to sell it; it was also part of the wife's case that the husband had refused to maintain her. Sir John Leach's decree is the only important part of the case, because there was upon the answer sufficient admissions for an injunction till the hearing without any decision upon the general question. The decree, however, must be considered as entitled to great weight; but it occurred in 1821, and before those cases which have created the difficulty and raised the doubt; for it must not be forgotten that Sir John Leach always maintained that the separate estate, with all its qualifications and restrictions, continued in operation during the time the woman was not under coverture. It is the establishment of the principle that that is not so, which has created the difficulty of supporting it during the subsequent coverture. The case of *— v. Lyne*,<sup>l</sup> has been often referred to for the purpose of introducing the authority of Lord Lyndhurst into this discussion. From the report of that case it is not possible to ascertain what was the point in discussion. I have examined the papers in the cause; the plaintiffs were holders of a promissory note of a married woman, under which they demanded payment out of her separate estate, and the bill stated distinctly as a fact that the property was held upon trust for the separate use of the

<sup>a</sup> 6 Sim. 127; S. C. 10 Leg. Obs. 458.

<sup>b</sup> 6 Sim. 420.

<sup>c</sup> 1 T. R. 193.

<sup>d</sup> 2 Vern, 17.

<sup>e</sup> 1 Ves. Junr. 22.

<sup>f</sup> 2 P. Wms 316.

<sup>g</sup> 2 Bro. C. C. 345.

<sup>h</sup> 1 Sim. & Stu. 432.

<sup>i</sup> 2 Russ. & M. 365.

<sup>j</sup> 2 Russ. & M. 427. <sup>k</sup> 1 Younge, 462.

wife, which upon the demurrer must have been taken as a fact, and so it really was; for the plaintiff afterwards amended the bill, and stated a settlement upon the marriage, by which the property was re-settled to the separate use of the wife. The demurrer was very properly over-ruled, and this question did not arise in the cause, whatever may have been the opinion of the learned judge as to the general question which he had no occasion to express.

Such then is the state of the authorities on this very important question. It is said to have been generally understood in the profession that the separate estate would continue to operate during a subsequent coverture; and that conveyancers have acted so continually upon that supposition, that very many families are interested in the decision of this question. That circumstance ought to have great attention paid to it. For the future it would not probably be found difficult to obtain the desired security for the wife by other means consistent with the well-established rules of property; but the existing arrangements must depend on the decision of this case. I have, over and over again, considered this subject with a great anxiety to find some principle of property consistent with the existing decisions, upon which the preservation of the separate estate during a subsequent coverture could be supported. I have been anxious to find means for preserving it; not only to maintain those existing arrangements, which have proceeded upon the ground of its validity, but because I think it desirable that the rule should, if possible, be established for the future, believing, as I do, that, when a marriage takes place, the wife having property settled to her separate use, all the parties, in general, suppose it will so continue during the coverture. To permit the husband, therefore, to break through such a settlement, and himself to receive the fund, would, in general, be contrary to the intention of the parties, and unjust towards the wife. This view of the case has led to a suggestion which has often been made in argument, by which the object might be attained without violating any rule of property; namely, by supposing the husband marrying the woman with property so settled, tacitly to assent to such settlement; or, at least, to be barred by an equity not to dispute it. I was, for some time, much disposed to adopt this view of the subject, and, in all cases in which the husband was cognizant of the fact, there would be much of equitable principle to support the gift or settlement against him; but putting the title of the wife upon such assent of the husband, assumes that but for such assent it would not exist. It abandons the idea of the old separate estate continuing through the subsequent coverture, and supposes a new separate estate to arise from the act of the husband. If the title of the wife were to rest on that supposition, I fear that the remedy would be very inadequate, and that questions would continually arise as to how far the circumstances of each case could afford evidence of assent, or raise this equity against the hus-

band. After the most anxious consideration, I have come to the conclusion that the jurisdiction, which this Court has assumed in similar cases, justifies it in extending it to the protection of the separate estate, with its qualifications and restrictions attached to it throughout the subsequent coverture, and in resting such jurisdiction upon the broadest foundation; and that the interests of society require that this should be done. When this Court first established the separate estate, it violated the laws of property as between husband and wife; but it was thought beneficial, and it prevailed. It being once settled that a wife might enjoy separate estate as a *feme sole*, the laws of property attached to this new estate; and it was found as part of such law, that the power of alienation belonged to the wife, and was destructive of the security intended for it. Equity again interfered, and by another violation of the law of property supported the validity of the prohibition against alienation. In the case now under consideration, if the after-taken husband be permitted to interfere with the property given or settled upon the marriage to the separate use of the wife, much of the benefit and security of the rules which have been so established will be lost. Why then should not equity in this case also interfere? and if it cannot protect the wife consistently with the ordinary rules of property, extend its own rules with respect to the separate estate so as to secure to her the enjoyment of that estate which has been so intended for her benefit? It is no doubt doing violence to the rules of property to say that property, which being given with qualifications and restrictions, which are held to be void, and therefore belonged absolutely to the woman up to the moment of her marriage, shall not be subject to the ordinary rules of law as to the interest which the husband is to take in it; and that is the sense, and the only sense, in which the expressions used in *Massey v. Parker*—“Why may she not by the act of marriage give it to her husband?” are to be understood; but it is not a stronger act to prevent the husband from interfering with such property, than it was originally to establish the separate estate, or to maintain the provision against alienation. In doing this, I feel that I have much to overcome, of which the observations thrown out by myself in *Massey v. Parker*, is the only part of which I do not feel the important weight; but I have to contend with Lord Brougham’s observations in *Woodmeston v. Walker*, and the Vice Chancellor’s decision in *Newton v. Reid*, *Brown v. Pocock*, (the second case,) *Malcolm v. O. Callaghan*, *Johnson v. Freeth*, and *Davies v. Thornycroft*, to which I have before adverted, and the doctrine now established, though denied by Sir John Leach in *Brown v. Pocock*, (first case,) and *Woodmeston v. Walker*, that before marriage, or after the coverture has determined by the death of the husband, the settlement or gift to the separate use and the prohibition against anticipation are wholly inoperative and void. In establishing the validity of the separate estate with its qua-

ifications, which constitutes its value, that is, a prohibition against anticipation, I am not doing more than my predecessors have done for similar purposes; and I have much satisfaction in finding myself justified, upon the grounds I have stated, in doing what in me lies in dissipating the alarm, and removing the danger, which has prevailed, lest the separate estate should be held not to exist at all during the subsequent coverture, or what would in many cases be a greater evil, that it should exist without the protection of the clause against alienation.

I therefore affirm the decree of the Master of the Rolls.

*Tullett v. Armstrong.*—At Westminster, January 21, 22, 23, and 24, 1839, and January 22, 1840.

*The Lord Chancellor.*—This judgment applies to the other appeal, *Scarborough v. Borman*, in which I affirm the order of the Master of the Rolls, allowing the demurrer. Let the deposit be returned to the appellant. Let the parties pay their own costs.

#### Queen's Bench.

[Before the Four Judges.]

#### EVIDENCE.

*On a question as to the genuineness of handwriting, a witness cannot be allowed to compare the document impugned with writings of the party to whom it is ascribed, and which are alleged to be authentic, unless such writings are in evidence in the cause for other purposes.*

This was an action on two bills of exchange for 50*l.*, alleged to have been drawn by one Skull, on and accepted by the defendant, payable at two months after date. The first was dated on the 19th, and the second on the 22d of April 1839. The first bill was admitted to be genuine, and the amount of it was paid into Court; the handwriting of the acceptance to the second bill was disputed. The cause was tried at the last sittings at Guildhall before Lord Denman. Evidence on the question of hand writing was offered in the usual way, and the witnesses for the defendant were proposed to be cross-examined in this manner: papers were presented to them, and they were questioned as to whether the name there written was or was not the genuine signature of the defendant; and it was then proposed to ask them whether, after looking at those papers, they did not believe the bill to bear the signature of the defendant. Those papers were not in evidence in the cause for other purposes. The learned Judge decided, that witnesses could not have their opinions asked as to the hand-writing of different papers, unless such papers were for other purposes than those of the proof or disproof of handwriting, made evidence in the cause; and he therefore refused to allow this course of cross-examination to be adopted. The jury returned a verdict for the defendant.

Mr. J. Jervis now moved for a rule to shew cause why there should be a new trial, on the

ground that the defendant's counsel had been excluded from a proper mode of examination. The case of *Doe d. Perry v. Newton*<sup>a</sup> is not in point; for that merely decided that letters which certain witnesses had stated to be genuine, could not be put into the hands of the jury for them to compare such letters with the signature in contest in the cause, and so to come to a decision. There the course proposed, was in fact a course to try the skill of the jury in comparing two writings, with neither of which were they before acquainted; but here the witnesses swearing to a knowledge of the hand-writing of the party were proposed to be asked questions with the view of seeing whether they possessed the skill and knowledge which enabled them to swear to the signature. This was a proper mode of trying the value of their evidence, and ought to have been permitted. There is no doubt that different pieces of writing, avowedly written by a particular person, may be shewn in every different and puzzling form to a witness, in order to see whether he really can recognize the hand as to which he pretends to speak. [Lord Denman, C. J.—But there the pieces of writing are those which are already in evidence in the cause.] Still, such an examination proceeds upon the principle of trying the witnesses' skill or knowledge. In *Griffith v. Williams*,<sup>b</sup> even the jury were permitted to compare different pieces of writing. *Doe d. Muddo v. Suckermore*<sup>c</sup> does not touch this case, for there the witnesses proposed to be questioned knew nothing of the hand-writing but from comparison, and there too the judges differed in opinion.

Mr. Justice Littledale.—I think that there ought not to be a rule in this case. I am not disposed to carry the practice further than it has hitherto gone. If we were to allow evidence of this sort to be introduced, we should be permitting the parties to raise many collateral issues on the trial of one case.

Mr. Justice Coleridge.—It seems to me that this is precisely within the case of *Doe d. Perry v. Newton*, where even the jury were not allowed to compare the document impugned with authentic writings of the party to whom it was ascribed, unless such writings were for other purposes in evidence in the cause. The principle of that case ought to be adopted here. Unless it is, we shall have a collateral issue raised as to the genuineness of every paper presented to the witness.

Lord Denman, C. J. concurred.

Rule refused.—*Griffith v. Ivory*, H. T. 1840.  
Q. B. F. J.

#### SLANDER.

*The defendant in an action of slander, has a right to have the question of bona fides left to the jury.*

This was an action of slander, and was tried at Winchester before Mr. Baron Parke in 1838,

<sup>a</sup> 1 Wil. Wol. & Dav. 403; 5 Adol. & El. 515. <sup>b</sup> 1 Crom. & Jerv. 47

<sup>c</sup> 1 Wil. Wol. & Dav. 405.

when the jury returned a verdict for the plaintiff, damages 50%. The words proved were substantially as follows : " Mrs. Lawrence had been to Leamington, and when she came back she put her brooch on a table in the parlour, and in the mean time, this woman came to my house. The brooch was worth 5l., and no one had been into my house but this woman ; you have been in my house, no one but my wife and you, and you must have taken it." The defence was, that the words were uttered *bond fide*, the defendant believing, on the representation of his wife, that the felony had been committed, and that the defendant had committed it. The plaintiff having been charged with the felony, positively denied the charge, and offered to be searched, and the defendant uttered the words in the presence of the persons about to search her. It afterwards turned out that the brooch had not been stolen, but had been left by the defendant's wife at a house at which she had made a call. The learned judge told the jury there must be a verdict for the plaintiff, and that the *bond fides* in making the charge could only go in reduction of damages. The jury returned a verdict for the plaintiff, damages 50%. A rule had since been obtained to set aside the verdict, and have a new trial on the ground of misdirection.

Mr. Crowder and Mr. Butt shewed cause against the rule. There was no plea of justification on the record in this case, and no pretence for saying, that there was in fact a justification for what the defendant had done. The facts of the case were undisputed, and the learned Judge was right in telling the jury his opinion on those facts, and in directing the verdict that they should find. A charge of this sort cannot be justified unless a felony has actually been committed ; here none has been committed ; the defendant was therefore without excuse. The amount of damages was left entirely in the hands of the jury, and there is no reason to say that there was any misdirection. There was no circumstance in the case which would make this a privileged communication ; and there was consequently nothing to leave to the jury but the question as to the amount of damages, for it was quite clear that the plaintiff was entitled to a verdict. The occasion on which the slander was uttered does not come within the rule as to privileged communications.

Mr. Erle and Mr. Barstow, in support of the rule. The whole of the circumstances here ought to have been left for the consideration of the jury. If the defendant had specially pleaded as a justification the facts which appeared in evidence, the plea would have been bad as amounting to the general issue. It is not the mere uttering of words in the presence of a stranger that makes them the proper subject of an action of slander, for if the occasion justifies the uttering of them, no action can be maintained ; *Toogood v. Spyring*.<sup>a</sup> In *Kine v. Sewell*,<sup>b</sup> the same principle was

adopted. In *Blake v. Pilford*,<sup>c</sup> a letter that would otherwise have been libellous, was held not to be so because it was written *bond fide* to the parties whom it really concerned. Now the question of *bond fides* is one which depends entirely on the facts of the case, and which ought therefore to be left to the jury. *Wright v. Woodgate*,<sup>d</sup> on which was founded *Martin v. Strong*,<sup>e</sup> both of which admit that rule in the clearest manner.

Lord Denman.—I do not see how it is possible to avoid saying that these circumstances ought to have been left for the consideration of the jury. If the charge was *bond fide* made, all the circumstances which showed the *bond fides* ought to have been communicated to the jury, and the judge could not be justified in taking on himself to say that the jury ought not to have these circumstances laid before them.

Mr. Justice Littledale.—I am of the same opinion. All the circumstances of the case ought to have been made known to the jury, and submitted for their consideration. The defendant believed that these things had been stolen. He made some enquiry, and then charged this woman with having stolen them. Whether he did this *bond fide* or not, was clearly a question for the jury, which they were bound to determine on all the circumstances of the case.

Mr. Justice Coleridge.—I am entirely of the same opinion. It has been long established in a great number of cases that charges and communications otherwise of a slanderous nature, may, on the ground of public convenience, be made with impunity, if they are made *bond fide*. In this case the defendant had a right to have the opinion of the jury, whether at the time he made the charge he did not *bond fide* believe that a felony had been committed, and that the plaintiff had committed it, and whether he was not at that time *bona fide* in pursuit of her. When he met her, it appeared he made the charge to her, and that she then offered to be searched : in the presence of the persons who were attending to search her, he repeated the charge against her. With respect to the rule attempted to be laid down in argument that the making of a charge of this sort cannot be justified unless a felony has been committed, it is one which the exigencies of society will never allow to be acted on ; for if a man is in pursuit of a person in the honest belief that a felony has been committed, and that a particular person has committed it, and he comes upon the suspected person, he has a full right to state the charge which he so *bond fide* believes to be true. He is not bound to abstain from making the charge, and so to let the suspected person escape, for if that was the case justice would entirely be eluded. If the plaintiff, in this instance, had said that she would not be searched, I agree that the defendant might have been stopped by her refusal until he had taken a more correct mode of proceeding than the evidence here

<sup>c</sup> 1 Moo. & Rob, 198.

<sup>d</sup> 2 Mee. & Ros. 573 ; 1 Try. & Gr. 12.

<sup>e</sup> 5 Ad. & El. 535.

shows him to have adopted. But as she consented to the search, he had a right to have all the circumstances that then occurred put before the jury in answer to her present complaint. The case of *Toogood v. Spyring* determined that the accidental presence of persons when the slanderous expressions were used, if they were used *bona fide*, would not make them less capable of justification. But besides that, who were the two persons here? They were persons who might be said to be ministers of justice for the time; for they were the persons called in to make the search, to which the plaintiff had consented to submit. All these circumstances, as it seems to me, ought to have been left to the jury.

**Rule discharged.—*Podmore v. Lawrence*, H. T. 1840. Q. B. F. J.**

### Common Pleas.

#### CONSTRUCTION OF CHARTER PARTY.

*The owner of a ship undertook by the terms of a charter-party to load at London and proceed to Bombay with a cargo, there to load a new cargo and to proceed with the same direct to London; and they further agreed that the charterers should have the privilege of sending the vessel on to Calcutta, upon the payment of an extra sum: Held, that the charterers were not authorised to load a cargo, to be carried from Bombay to Calcutta, but only from one of those ports to London.*

This was an action on a charter-party. The declaration stated the instrument, by which it was agreed that the ship Bengal, which was the property of the defendants, being strong and in every way fitted to undertake a voyage, should with all convenient speed proceed to a loading berth in the London Docks, and having there taken in a cargo for the plaintiffs, should at once proceed to Bombay, there to discharge the same, and that she should then and there take in another cargo, with which she should return immediately to London, in consideration &c.; the vessel to sail on or before the 1st June. It was then further agreed that the plaintiffs should have the privilege of sending the ship to Calcutta from Bombay, upon the consideration of their paying 17s. per ton per month for the extra time during which she should be employed, and that if the vessel should return direct to London from Bombay, the plaintiffs should have the power of sending her on one voyage to the coast of Malabar, the cargoes to be taken along side at the cost of the merchants. Breach, that the terms of the charter-party, with regard to the agreement to pay, having been complied with by the plaintiffs, and they being ready further to perform this contract, called upon the defendants at Bombay to receive a cargo there, to proceed with the same to Calcutta, but that he refused, and that he sailed to Calcutta without any cargo.

The defendants pleaded that while the vessel was at Bombay the defendant Wright was ready and willing to receive a full and com-

plete cargo, according to the terms of the charter-party, to London, but that the cargo in the declaration mentioned, tendered by the plaintiffs, was to be carried to Calcutta, and not to London.

#### Demurrer and joinder.

*R. V. Richards*, in support of the demurrer, contended that by the terms of the charter-party the defendants were bound to take a cargo, and to proceed with it to Calcutta, because it could not be supposed that the plaintiffs would undertake to pay 17s. per ton for the use of a vessel from which they derived no benefit.

*Bompas, Serjt., contrà*—It was the duty of the plaintiffs to shew what was the meaning of the charter-party, for the objection raised was theirs. It was clear that whatever cargo was taken on board the vessel, it was to be delivered in London.

*R. V. Richards* replied.

*Bosanquet, J.*—This declaration is founded on a charterparty, of a breach of which the plaintiff complains. The question is, whether the plaintiff in his declaration shows that the charter party has been broken? The instrument provides in the first instance that the ship Bengal shall proceed to load in the London Docks, and that being so loaded it shall proceed to Bombay and there discharge the cargo, and then load a full and complete cargo of merchandize, with which it shall proceed direct to London. The voyage therefore in the first instance is from London to Bombay, and back direct to London. It is then provided that the ship shall sail from London by the first of June, “the merchants to have the privilege of sending the ship to Calcutta from Bombay, upon their paying 17s. per registered ton per month for the extra time, during which it shall be employed.” This privilege given therefore is to send the vessel from Bombay to Calcutta, upon the payment of a certain sum per month, for the extra time, and the charterers also engage to pay the ship’s port charges and pilotage to Calcutta; the “cargoes” to be brought and taken along side the vessel, at the cost and expense of the merchants. It struck me at first that this word “cargoes” must be taken to apply to the cargoes at Bombay and at Calcutta, but I think that it applies to the outward and homeward cargoes, and there is no inconsistency in the employment of the word in the plural number. It is then further agreed that if the ship go direct from Bombay to London, the merchants shall have the privilege of sending her to the Coast of Malabar. That is the charter-party; then the plaintiffs complain that upon the ship’s arrival at Bombay, and when she had delivered her outward cargo there, the defendants were required to take on board and load on board the ship, a cargo to proceed to Calcutta, but that he refused to do so;—that the ship proceeded from Bombay to Calcutta, without a cargo at all, contrary to the tenor of the charterparty, by means whereof the plaintiff was deprived of the profits which would otherwise have arisen. To this a plea is put

in, that upon the arrival of the vessel at Bombay, the defendant was ready to load and receive a full and complete cargo to be carried and conveyed in the same ship, according to the terms of the charterparty, to London, but that the cargo which he was required to load on board was to be carried and conveyed to a certain port, other than London, or any dock in the Thames, that is to say, Calcutta, contrary to the terms of the charterparty, and on that account, and no other, he refused to load the said cargo. Now the substance of this is, that on the arrival of the ship at Bombay the outward cargo was there discharged, that the ship was not then required to proceed to Calcutta to take in a cargo, for the voyage to London, nor, having taken in part of the cargo at Bombay, was it required to go on to Calcutta to complete her cargo for London, but it was required that she should carry a cargo to Calcutta and there discharge it. Now I cannot find in the charterparty any terms, which can compel the owners to take on board any cargo under these circumstances for any port other than London; and it does not appear to me that anything appears to authorise the employment of the vessel in any intermediate voyage, or by which, the cargo having been discharged at Bombay, she is to take on board any second cargo to be discharged at Calcutta.

*Erskine, J., and Maule, J., concurred.*

Judgment for the defendants.—*Cockburn and another v. Wright and others, H. T. 1840. C. P.*

#### COMMON LAW SITTINGS,

##### Queen's Bench.

The Court will take Causes standing over with Judgment of the Term, on Saturday, the first of February, and then adjourn to Wednesday, the fifth.

##### Exchequer of Pleas.

After Hilary Term, 1840.

##### MIDDLESEX.

Saturday	Feb. 1	Common Juries.
Monday	.. 3	Revenue & Com. Juries.
Tuesday	.. 4	
Wednesday	.. 5	Common Juries.
Thursday	.. 6	
Friday	.. 7	
Saturday	.. 8	Special and Common
Monday	.. 10	Juries.
Tuesday	.. 11	
Wednesday	.. 12	Common Juries.

##### LONDON

Monday	.. Feb. 3	To adjourn only.
Thursday	.. 13	Adjournment day.—Com- mon Juries.
Friday	.. 14	
Saturday	.. 15	Common Juries.
Monday	.. 17	
Tuesday	.. 18	
Wednesday	.. 19	
Thursday	.. 20	Special and Com. Juries
Friday	.. 21	
Saturday	.. 22	

Monday .. 24 }  
 Tuesday .. 25 } Common Juries.  
 Wednesday .. 26 }

The Court will sit at half-past nine o'Clock.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES,

##### House of Lords.

*Copyholds Enfranchisement.* Ld. Brougham. [In Select Committee, consisting of the Lord Chancellor, the Dukes of Norfolk and Richmond, the Marquis of Salisbury, the Earls of Devon and Shaftesbury, the Bishops of Landaff and Exeter, and Lords Redesdale, Ellenborough, Lyndhurst, Wynford, Brougham, Duncannon and Hather-ton.]

##### House of Commons.

To amend the Law of Copyright. Mr. Serjeant Talfourd.  
 To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tennant.  
 [For second reading.]  
 To carry into effect the Recommendation of the Ecclesiastical Commissioners. Lord J. Russell.  
 To extend Freemen and Burgesses' Right of Election. Mr. F. Kelly.  
 Drainage of Lands. Mr. Handley.  
 To amend Tithes Commutation Act. [For second reading.] Sir. E. Knatchbull.  
 Vagrants' Removal. [For second reading.]

##### Small Debt Courts for

Aston,	Bolton.
Brighton,	Newton Abbott.
Tavistock,	Liverpool.

Summary Conviction of Juvenile Offenders. Sir E. Wilmot.

##### PRIVATE BILLS.

No Private Bill will be read the first time after the 9th March.

No report will be received after the 1st June.

##### COURT OF CHANCERY.

A petition from the attorneys and solicitors of Exeter was presented, complaining of the delay and arrears of business.

#### THE EDITOR'S LETTER BOX.

We understand that the examination mentioned by "Gamma," is required only at the Inner Temple; and that at both the Temples, three years are sufficient; but we recommend him to inquire at the Treasurer's office.

The letters on the Wills Act; the difficulty of some of the Questions at the Examination, &c., shall receive early attention.

We rather question the utility of pointing out an error in the report of a case so long ago as 1837, if the error relates only to some of the facts, and not to the point decided; but we will look to it.

# The Legal Observer.

SATURDAY, FEBRUARY 8, 1840.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ON THE PRECEDENCY OF PRINCE ALBERT.

THE king or queen regnant is the fountain of honour, of office, and of privilege. “By the laws of England,” says Lord Coke,<sup>a</sup> “as all degrees of nobility and honour were derived from the king as the fountain of honour; so all the lands in England were derived from the crown of England, and are holden of the same, mediately or immediately.” “The law,” says Blackstone,<sup>b</sup> “supposes that no one can be so good a judge of the merits and services of the people as the king himself, who employs them. It has, therefore, intrusted with him the sole power of conferring dignities and honours, in confidence that he will bestow them upon none but such as deserve them.” “By the constitution of every feudal kingdom in Europe,” says Mr. Cruise,<sup>c</sup> “all dignities were derived from the sovereign; and Lord Coke says that, by the law of England all the degrees of nobility are derived from the king, as the fountain of honour. Sir W. Blackstone, has laid down the same doctrine; and although dignities have been frequently granted in parliament, yet it does not appear that the assent of the peers was ever deemed necessary to the creation of dignities.”

It would seem, therefore, that independent of any act of parliament limiting the prerogative on this point, the Crown, as the fountain of honour, has the power of granting any rank or precedence it pleases. The only statute, of which we

are aware, affecting this question, is the 31 Hen. 8, c. 10, the title of which is “For placing of the lords.” The preamble reserves to the king the prerogative “to give such honour, reputation, and placing to his councillors, and other his subjects, as shall be seeming to his most excellent wisdom;” and among other things enacts that the King’s Vicegerent (Thomas Lord Cromwell), the Lord Chancellor, and other great officers of state, shall rank above all dukes “except only such as shall happen to be the king’s son, the king’s brother, the king’s uncle, the king’s nephew, or the king’s brother’s or sister’s sons,” (s. 4); and by s. 7, it is enacted, that all dukes not aforementioned, marquises, earls, viscounts, and barons, not having any of the offices aforesaid, shall sit and be placed after their antienty as it hath been accustomed.”

Now the main question which arises on this statute, is, whether it is a permanent settlement of the table of precedence, so far as the royal family is concerned; or whether it merely settles the precedence among the lords themselves, reserving the right so far as the royal family is concerned, except that it gives precedence to the royal family named in the act, *being dukes*, over all other dukes. If the former view be correct, then, as against the vested rights of the present King of Hanover, (Duke of Cumberland), and the Dukes of Sussex and Cambridge, the Crown, by the simple exercise of its prerogative, could have no power to give Prince Albert precedence; but if the latter view be the more correct one, the crown has undoubtedly that power, as the fountain of honour.

Let us see then what are the opinions of the great authorities as to the construction

<sup>a</sup> 4 Inst, 363.

<sup>b</sup> 1 Bla. Com. 271.

<sup>c</sup> Dignities, p. 21.

of this statute: "At the common law," says Lord Coke,<sup>d</sup> "the king, by his prerogative royal, might give such honour, reputation, and placing to his counsellors, and other his subjects, as should be seeming to his wisdom, which prerogative was so declared by act of parliament, 31 Hen. 8, c. 10, in the preamble." By this prerogative, Henry the 6th granted to Henry Beauchamp to be the first Earl of England, Henry first Earl of all England, and Earl of Warwick; and he afterwards created him Duke of Warwick; and granted that he should have a seat in parliament, and elsewhere, next to the Duke of Norfolk, and before the Duke of Buckingham. The same King created Edward of Hadham, to be Earl of Richmond; and granted him precedence before all other earls. He also created Jasper of Hatfield, Earl of Pembroke, and gave him precedence before all other earls, next to his brother, the Earl of Richmond.

"King Henry 8, however," says Coke, "though standing as much on his prerogative as any of his progenitors, yet finding how vexatious it was to himself, and how distasteful to his ancient nobility, to have new raised degrees to have precedence of them, and finding that this kind of controversy for precedence was of that nature that it had many partakers, spent long time, and hindered the arduous, urgent, and weighty affairs of the parliament, and was content to bind and limit his prerogative by act of parliament, concerning the precedence of his great officers and of his nobility." And he then goes on to shew the order of precedence which takes place among the spiritual and temporal peers by virtue of that statute; and among other things, on the construction of this statute, he says, "If the king should create a duke to the estate of archduke, yet by one of the words of this statute, he shall not take place of any duke that was his ancient, *et sic de similibus*, otherwise this statute might be made of no force; and an archduke is some other duke, and if a duke or earl &c. be made protector of the realm in parliament, he shall have no other place but as a duke or earl."

Selden, in his *Titles of Honor*, does little more than give the statute verbatim, but he seems to dwell with some emphasis on the title of the act, and he quotes from the Lords' Journal, that on the 1st of May, the Lord Chancellor "*quandum introduxit billam concernentem assignationem locorum quorundam procerum et capitalium officiorum*

*hujus regni Anglie, viz. vicegerentis domini regis in spiritualibus, domini cancellarii, domini thesauri, et aliorum in eadem billa declaratorum, &c.*<sup>c</sup>

So that it will be seen that Lord Coke says, that Hen. 8, was content by this act to limit his prerogative concerning the precedence of his great officers, and of his nobility; and that Selden says, it was an act to settle the places of the king's vicegerent (Thomas Lord Cromwell,) the Lord Chancellor, and others, which can hardly apply to the royal family.

It seems, therefore, doubtful, whether the Queen has not the power, at any rate for her life, to grant any precedence she may think proper to her consort, after the marriage, as one of the royal family, and whether the act of Henry VIII. restricts her prerogative in this respect. By an act already passed in the present session, when naturalized, the Prince may be created a member of the Privy Council, a member of either House of Parliament, or take any office of trust.<sup>d</sup> The Naturalization Bill having now also become the law of the land, it is clearly competent for the Queen, if she pleases, to create her future consort a peer; but if she had no power to give him precedence, then by the act of Henry VIII. he would rank only according to the degree of peerage and the date of his creation. Thus, if he were created a duke, he would rank after the present latest duke created; and if he were not a peer, he would, as we conceive, have no assigned rank whatever. At all events it appears clear that *out of the House of Lords* her Majesty may assign the Prince such rank as she deems fit.

It is, however, to be observed, that in the act for naturalizing Prince Leopold of Saxe Coburg, (56 Geo. 3, c. 13, s. 3,) power is given to the king to give him "such precedence to rank before the Archbishop of Canterbury, the Lord Chancellor, and all other great officers, and the dukes, (other than and except the dukes of the blood royal,) and all other peers of this realm, as his Majesty shall deeme fit." It will be admitted, that the consort of the Sovereign stands in a different character from the consort of the heir or heiress presumptive of the Throne; but it may be said, that it was unnecessary to give the king the power conferred on his majesty by this act, if he already possessed it.

Having said thus much respecting this question, we can only, in common we are

sure, with the whole legal profession, long celebrated for their loyalty and attachment to the Crown, express our heartfelt wishes and prayers for the happiness of our Queen and her Consort.

## LIMITATIONS TO THE SEPARATE USE OF A WOMAN.

We have for the last seven years devoted a considerable space to the question of separate use, and the many conflicting decisions relating to it,<sup>a</sup> and we are now desirous of briefly stating, so far as we are able, the precise effect of the important judgment of the *Lord Chancellor* in the case of *Tullett v. Armstrong*, reported in our last Number; and we may remark, that his Lordship has here given another proof of his great judicial qualities, in freely reviewing and examining his own opinions as well as those of other judges, and of correcting them where he thought them erroneous: from which a judge of inferior reputation might have shrunk. Indeed, it has not unfrequently happened, that the more wrong the opinion, the greater has been the tenacity shewn in adhering to it.

We are inclined to think that this judgment sets the doctrine of separate use on its proper footing. On the one hand, in the opinion of Sir John Leach, V. C., it was thought right to give it an effect so stringent that if property were settled to the separate use of an unmarried woman, she even when discovered, had no power over it, if accompanied by the clause against anticipation;<sup>b</sup> but this decision was overruled by Lord Brougham, C., and is also discredited by the present *Lord Chancellor* in his recent judgment.<sup>c</sup> On the other hand, Sir L. Shadwell,<sup>d</sup> has held, that this clause was of so little force, that in a limitation of a fund to a married woman, although accompanied by the clause against anticipation, if the fund were not given over upon alienation, it might be alienated by the woman and her husband after their marriage. But this case is also overruled by the late judgment, together with the *dictum* of the present *Lord*

*Chancellor* in its support, in *Massey v. Parker*.<sup>e</sup>

Thus much has been overruled by the case of *Tullett v. Armstrong*, but we conceive that the main point in *Massey v. Parker* still remains in force, viz. that a limitation to the separate use of an unmarried woman is of no effect unless she marries, and that she is competent, prior to her marriage, either to make over the fund to her intended husband or any other person. But we hold, that it is now the settled law, until the *Lord Chancellor's* judgment in *Tullett v. Armstrong* be reversed, that when the marriage takes place it will become effectual, whether the clause against anticipation be inserted or not. "After the most anxious consideration, I have come to the conclusion, that the jurisdiction which this Court has assumed in similar cases, justifies it in extending it to the protection of the separate estate, and in resting such jurisdiction upon the broadest foundations, and that the interests of society require this should be done."

## THE PROPERTY LAWYER.

### COPYHOLDS.

The copyholder has an interest in the court rolls as well as the lord, and the lord cannot deny a copyholder access to them. *Stacey's case*, Latch. 182. And the Court of King's Bench will interpose upon a mere claim by *mandamus*, without any affidavit that the party claiming has an actual interest in the premises. *Rex v. Lucas*, 10 East, 235; *Rex v. Towers*, 4 Mau. & Sel. 162; *Bateman v. Phillips*, 4 Taunt. 162, overruling *Rex v. Allgood*, 7 T. R. 746, in so far as it required some cause to be depending. It has also recently been held, that any person interested in copyhold property is entitled to inspect the rolls without the others joining in the application.

*Carrington* moved for a *mandamus* to be directed to the steward of the manor of Northleigh, Oxfordshire, requiring him to admit the applicant, *Hutt*, to inspect the court rolls of the manor. Several persons were interested in the property of which the rolls in question were the title. The applicant, *Hutt*, was one of these persons. When he applied to the steward for leave to inspect the rolls, the latter refused to allow the inspection, on the ground that the application was not made at the in-

<sup>a</sup> See the last of these, 18 L. O. 289, which contains a reference to several others.

<sup>b</sup> *Woodmeston v. Walker*, 2 Russ. & M. 197; *Brown v. Pocock*, 2 Russ. & M. 210; S. C. 2 M. & K. 189.

<sup>c</sup> See *ante*, p. 265, 266.

<sup>d</sup> *Newton v. Reid*, 5 Sim. C63.

<sup>e</sup> 2 M. & K. 174; 9 L. O. 229.

stance of all the parties interested jointly. This could, however, be no ground of objection, as the party applying was interested in the property. This inspection of the rolls did not prevent the other persons interested in the property from also inspecting them. Pursuant to 1 Reg. Gen. H. T. 2 W. 4, s. 102, the tenant was entitled to his rule absolute in the first instance. *Coleridge, J.*—You may take your rule absolute. Rule granted. *Carrington*, on a subsequent day, stated that a difficulty had arisen, on further examination of the affidavit supporting the rule; for it appeared that the demand to inspect the court rolls had not been made by Hutt himself, but by a person who was acting pursuant to a written authority given by the person who had a power of attorney from Hutt, to make the demand. The question was, whether this was a sufficient demand to entitle Hutt to his writ of *mandamus*. *Coleridge, J.*—I think that delegated authority is not sufficient. Rule refused. *Ex parte Hutt*, 7 Dowl. 690.

#### NOTICES OF NEW BOOKS.

*Law and Lawyers; or Sketches and Illustrations of Legal History and Biography.*  
In two volumes. London: Longman & Co. 1840.

HAVING reason to rejoice in the name of Lawyer, we always welcome every one who illustrates the excellence of the profession, or contributes his aid in making known the merits of its professors. We think the present work has been composed in a right spirit; that it shews considerable research into the annals of English law; and many of its biographical anecdotes are well told, and its sketches able and spirited. The matter, also, has been well arranged.

For the present we must confine ourselves to a general statement of the contents of the work, and a few extracts by way of sample of its execution.

The first volume treats of or describes:—  
1. Law Education. 2. Early Struggles of eminent Men. 3. Legal Eccentricity. 4. The Bar. 5. Advocates and Advocacy. 6. Sketches of former Chancellors. 7. Sketches of former Judges.

The contents of the second volume comprise:—1. Lawyers in Parliament. 2. Law Literature. 3. Sketches of eminent Lawyers. 4. Literary Lawyers. 5. The Bench and the Woolsack. 6. Comments on Con-

veyancing. 7. Morality of Law and Lawyers.

The impulse which has been recently given to the Study of the law, and the necessity which now exists of considering the best means of acquiring legal knowledge, render all remarks on these subjects worthy of consideration. The present author says,

"In former times, attendance in the Courts filled the same part in a legal education that pupilage in a barrister's chambers does at present. The reason for this change is obvious. Then the law, as administered by the judges, was the chief object to which the student had to direct his attention; whereas now, the practice of the Courts principally requires his attention. In Lord Guilford's days, we hear of barristers having clerks who seem to have filled an intermediate space between the honourable fraternity who now bear that name, and the pupils of the present day. These clerks appear to have been occupied chiefly in conveyancing, which was then the only branch of the profession in which there was any thing like a complicated system of practice. Many of our most distinguished men have never enjoyed the benefit of a regular pupilage. Lord Mansfield was an eminent instance of this kind. When he was a student, he belonged to a law debating society, of a superior class to those which exist now-a-days. So carefully did the members prepare their arguments, that Lord Mansfield found his useful to him, not only when at the bar, but even when on the bench. Mr. Justice Buller, who was raised to the bench when but thirty-five years of age, whose reputation was acquired as a special pleader, was in the office of Mr. Ashurst, afterwards also on the bench; and it was with him the practice, now so common amongst law students, of passing a certain time in a pleader's chambers, mainly originated "There are but two ways," said a great judge, "for getting on in the law—special pleading, or a miracle:—I preferred the former." Sir Frederick Pollock, it is well known, found special pleading the best road to fame and honour.

"For information of a practical description, a "pupilage" is undoubtedly necessary. The most industrious study would never teach the surgeon how to amputate a limb, or even bandage a fracture.

"The law lectures at the London University and King's College have not, it is generally considered, proved of much service to the cause of law education; but probably this is owing in some degree to want of encouragement. The objection that has been advanced against them, viz., that they are, from their form, not calculated to impart instruction in law, as no illustrations can be used in them, would apply as well to moral philosophy, mathematics, history, languages, &c., on which lectures have been delivered in every European university with distinguished success. Some one facetiously recommended Mr. Amos to meet this objection by engaging two persons,

when he was lecturing on "Ejectments," to represent John Doe and Richard Roe; and, in order to illustrate his meaning, John Doe was to kick Richard Roe out of the theatre! As substitutes for either study or pupilage, it would be absurd to recommend law lectures; but, as auxiliaries to these, we believe them to be beneficial.

"A clerkship in a solicitor's office has also been recommended by high authority as a useful school for the bar. Lord Tenterden, when he resolved to turn his attention to the law, was for some time in the office of a large firm in Craig's Court. This step he was induced to take upon the recommendation of Judge Buller. Mr. Beutley, the conveyancer, who died two or three years ago, was for a considerable time in one of the principal agency houses in London; and has been often heard to declare, that he owed to the habits he there acquired, a facility of mastering every document and case that came before him, however difficult or repulsive it might be. This gentleman, who was eminent in his branch of the profession—and there is none which requires more positive learning—never enjoyed the advantage of pupilage in any barrister's chambers. All the information and experience he obtained, he acquired during his clerkship. Chief Baron Thomson commenced his legal studies in an attorney's office, as also did Lord Wyuford and Sir William Grant. Lord Thurlow was articled, together with Cowper the poet, to a solicitor near Bedford Row; and his great predecessor, Lord Hardwicke, passed through the same ordeal. Dunning was in his father's office for some considerable time. Lord Macclesfield actually practised as an attorney. Lord Kenyon served his articles. Sir William Garrow passed some time in a solicitor's office, as did Sir Samuel Romilly. Lord Gifford was regularly articled; and so also was Lord Lisford, Chancellor of Ireland, and Sir George Wood, and Sir Francis Buller, very learned and distinguished judges.

"If we had to refer to eminent men of the present day, we should find little difficulty in pointing to some great names who have ascribed their success in life to the training they have received in attorneys' offices. The names of Wilde, Adolphus, Preston, and many others, could readily be mentioned. Lord Brougham once publicly declared in the Court of Chancery, that if he had to recommence his legal studies, he would begin as a clerk in an attorney's office. These are most assuredly strong testimonies in favour of this line of study; and there can be no question that in a solicitor's office much miscellaneous knowledge of great use may be *picked up* (we use the term advisedly). But that knowledge, because it is miscellaneous, must necessarily be superficial, and is valuable chiefly because it is in its character more practical than that which mere study or pupilage would probably confer. The habits acquired in the school of which we are speaking are also undoubtedly desirable, as the student is there accustomed to severe application, and to labour conversant not always

with topics the most grateful to the mind. Those habits of intermittent attention which characterise such men as Lord Bacon has called "bird-witted" are there corrected; and there also the student acquires a dexterity and readiness in the application of his knowledge. He is often placed in situations which demand and therefore develop that indescribable attribute, *tact*; and being required to be able at a moment's warning to afford council on any point, learns therefore to keep his knowledge in constant readiness. On the other hand these advantages, not altogether unattainable elsewhere, are purchased at the sacrifice of that profound law learning which distinguished the lawyers of past times, and which they obtained by an almost exclusive dedication of their time to its acquisition. This could scarcely be the fruit of studies, in themselves so interrupted, and never prosecuted below the surface, as those for which the embryo attorney can find time."

In a work designed chiefly (though not entirely) for the *amusement* of the legal reader, we should not be over fastidious in the materials collected by the author's diligence to effect his object. Perhaps some of the anecdotes might have been omitted without injuring the merit of the work. As might have been expected, the larger portion are old: to them we do not object, especially as they are for the most part introduced with skill. We select the following, which are probably not familiar to our readers:—

"When Lord Lyndhurst came into office in 1827, he wished to obtain Sir John Leach's consent to a reform in the Chancery Court (since effected) by which the Rolls Court should be made a morning Court, and the Master should hear motions, &c., like the Lord and Vice Chancellor. Well knowing Leach's temper, Lord Lyndhurst was careful in selecting a person to notify to the Master his wishes. He fixed upon one on whose discretion he thought he could rely, and dispatched him. The envoy charged with this delicate mission, obtained an interview with Sir John, and commenced with a long flourish on the Chancellor's wish to diminish the arrears of business which had accumulated in Chancery,—dwelt on the duty of public men to make sacrifices for the public advantage,—and ran over every topic which he could think of, to prepare the Master for the coming request. Sir John, he was delighted to see, heard him with great attention, bowed, smiled, said 'Certainly,' 'To be sure,' 'Without doubt,' just in the right places. The messenger, thinking that the rumours he had heard of Sir John's temper, were altogether unfounded, then 'popped the question.' In a tone of emphatic politeness, betraying neither surprise, nor anger, nor anything but decision, the Master replied, bowing, 'Sir, I will not. I wish you a good morning.'



"At the assizes in Cardiganshire, in 1822, the defendant in an action sent a statement of his case, with a ten pound note enclosed, addressed to Mr. Justice *Alderson*, at his lodgings. When the learned Judge next day took his seat on the bench, he mentioned what he had received the evening before, and declared his intention of placing the letter in the hands of the Attorney General for the purpose of a prosecution against the offender. It was, however, intimated to him that the offence had been the result rather of ignorance than of crime, and the Judge, having returned the money and censured the defendant, agreed to allow the matter to drop."

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"A case was once sent to Lord *Redesdale* for his opinion, and a very short time, he was told, could be allowed him for answering it. The case involved a question of great importance, which required some consideration to determine. In accordance with his client's request, Mitford wrote a long opinion within the prescribed time. In a few days, the case was returned him for further consideration, and it was intimated to him at the same time, that his previous opinion had not been found very intelligible. "That was precisely what I intended," said Mitford. "In the short time that was allowed me, I could not have given a proper opinion, without risking my professional reputation. I gave you then an opinion which you would not understand, and on which you could not, therefore, act."

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"There is no branch of our jurisprudence which tasks in a greater degree the learning and ingenuity of the practitioner than *conveyancing*. There is none in which solid acquirements are more evidently necessary, and the want of them would be more speedily detected. Patient labour, untiring research, prosecuted in the retirement of the closet, away from the excitement of the forensic forum, which endows the advocates with powers which he does not usually display—this is the path of the conveyancer. He is required to be a profound lawyer; none but such can possess what Sir William Blackstone calls "a sort of legal apprehension," which will enable him to discover the points of difficulty which the deduction of a title may present. He must be something besides a lawyer; his knowledge must not be confined to the circle of mere professional information. Called on to advise not only what is *legal*, that is, in conformity with law, but also what, under the circumstances of the case, is most prudent and desirable, and often most *fair*—the transactions of business, the ordinary affairs of life, and the character of men must be familiar to him. For not only is his counsel solicited on the simple point—is a certain line of conduct, or a certain disposition of property, in conformity with the requisitions of law; but the requisition is often put—out of different courses, none of them prohibited by the law—which course will effectuate, at the least cost (of money, of time, or otherwise) the intentions of a party?"

## ON THE MODE OF EXAMINING ARTICLED CLERKS.

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Sir,

I AVAIL myself of your valuable columns to make the following remarks public. I have observed, with regret, in the last, and in many former sets of questions, framed for the examination of articled clerks, the great preponderance of dry practical questions over those on the principles of law, and the small proportion of conveyancing questions. I have no doubt the Examiners exercise their best discretion in this matter; but as they are invariably town practitioners, they naturally confine the scope of the examination to those branches which occupy their largest attention; but a clerk educated in the country (as I have been, and in an office which I consider presents a fair criterion of country practice), is not prepared to answer intricate questions on the practice of Courts which he has never had an opportunity of attending. Conveyancing and the principles of the law constitute his *forte*, and he should not be taken out of his element. I hope the Examiners will kindly take this into their consideration; and from their most impartial conduct, which I have heard eulogised by gentlemen who have just passed their examination, I have every reason to indulge the hope that this humble suggestion will meet with attention. The dread tribunal will then (to me) be shorn of many of its terrors.

As I have taken upon me to speak, I will venture to allude to another circumstance, which, in my opinion, loudly calls for a remedy, which is, that there are no prizes or marks of merit bestowed upon those who excel their comrades at the examinations. I have waited long, hoping to see this subject taken up; but, seeing no movement, I have, at last, in despair, put my own humble pen in motion to represent the anomalous grievance, —I say *anomalous*, because trials of strength and rewards, ought to, and usually do go hand in hand. If we consider the universities, we shall find this principle illustrated. If we look to the examinations of medical students, there likewise reward follows merit. Again, if we look back into remoter ages, the Olympic or Pythian games present themselves with the victorious contenders crowned with laurel. I could instance many other examples, *ceteris cunctis*, but I have cited enough to prove the general principle. Is the object of the examination to secure knowledge and merit? It operates of itself but partially; there must be yet another impetus: the spur of competition must be added before the desired end be fully attained. I hope, now that I have broken the shell, this subject will be seconded by other means.

A. W. O.

[It appears that about one half the questions are on the principles of the law, and the rest on the practice of the Courts. The nature of the Examiners' certificate precludes their putting so many questions on conveyancing, to the exclusion of Common Law and Equity, as our correspondent recommends. Ed.]

Mr. Editor,

Allow me to call your attention to the 29th question of the last examination, as printed in your "Observer." I must confess that I think it is a pity that the Examiners put questions of that kind. The questions have as yet been confined to seventy-five in number, but now it is merely nominally so, as most of the questions involve more than one, and some several; and I feel satisfied that many solicitors in good practice would find difficulty in answering many of them.

#### A CLERK UNDER ARTICLES.

[We have the means of knowing that the Questions are generally approved. It is impossible to please every body. ED.]

### THE STUDENT'S CORNER.

#### WILLS ACT.

To the Editor of the Legal Observer.

Sir,

I beg to offer a few observations on a point of construction on the Wills Act. The case put will be found at p. 169, of your present volume: viz.—"A. devises to his son B. in fee simple.—B. died in the lifetime of A., having by will disposed in general words of all his real estate to C., a stranger in blood. A. afterwards died, and at his decease a child of B. was living." The doubt being whether C., or the child of B., was entitled to the land devised by A. to B.

On first perusing an act of parliament we generally arrive at the intention of the framers, but afterwards, on weighing its provisions one by one, doubts arise in our minds, and we are often led away from the true construction to be put on it *as a whole*, and allow ourselves to adopt an opinion on its words, which we know to be contrary to the spirit of the statute and to the public good. This appears to be the case with those lawyers who, (in the instance given by your correspondent,) have felt bound to express the opinion they have unfortunately arrived at, which, on reviewing the state of the law with regard to the subject of lapse devises and bequests, will, I conceive, be found directly opposed to the intentions of the framers of this act, and to the act itself. There is, I readily admit, considerable ambiguity in this section, (viz. 33d) taken alone, when applied to the case of a devise by a child or other issue of a testator, the devisee dying before the testator, but leaving issue living at testator's decease, as in that of the case put, viz. of A. (the testator) B. the son of testator, and B.'s issue. The 33d sec. will have no operation where the devisee is only a collateral relation or a stranger; but this is not in issue. Until this act of 1 Vic. c. 26, a devise would lapse if the devisee died in the lifetime of the testator; *Warner v. White*, 3 Bro. Parl. Ca. 435; *Doe v. Kett*, 4 T. R. 601, and many other cases. This state of the law often worked great hardship to the children of younger branches of families, and in some instances to the elder also, as in the case of a

devise to "the eldest and every other son successively, according to seniority, in tail, and the eldest died in testator's lifetime leaving issue;" his issue took no interest, but the estate descended on the second son. It has therefore been wisely and humanely provided by sec. 33, that where the devisee is a child or other issue of testator:—as B. is in this instance,—there the devise shall not fail if there be issue of such child or other issue of testator, as B.'s issue living at testator's decease, though the devisee, as B., die before testator, and such issue of devisee, B. shall stand in his parent's place. Now it appears that the framers of this section wished to avoid the evils attendant on the old law of void devises in certain cases, where those hardships are most severely felt, as where the grand-children and other issue of a testator are affected by the death of their parent in the lifetime of his father, or other ancestor, but as to collateral relations and strangers to leave them to the old law. But what would become of this excellent provision in favour of such issue of a deceased child of a testator, if it should be decided that it was not for the particular good of the issue of such deceased child or other issue of a testator *only*, but that it worked for the benefit of the deceased, and that it gave new life to his, deceased's will, first coming into force at a time when he had no interest in the land whatever, the testator being then alive; and now that the will affects property to which a testator is entitled at his death, this will of deceased child, B., is to operate from the time of the supposed death of B., (which is for the purpose, as I conceive, of giving the estate to the grandchild or other issue of the testator, and not to a devisee of the deceased, as C., supposed by the statute to have happened at a moment immediately subsequent to the testator's death, and for that purpose only) and therefore C. shall take. Besides these arguments there is one which I think satisfactorily sets the matter at rest. It is that the policy of the law has been always to prevent a mere expectancy, i. e. a possibility not coupled with an interest, which would make it a contingent interest, from being disposed of either by deed or will, and various statutes have been enacted to this effect. As regards the disposition by *deed*, the latest are the Fines and Recoveries Acts for England and Ireland, 3 & 4 W. 4, c. 74, and 4 & 5 W. 4, c. 92; by sec. 20 of the first mentioned act *heirs expectant* shall have no power to make any disposition under the act; and by the statute for Ireland, sec. 22, any person is empowered to dispose of a contingent interest to which he shall become entitled in any manner (except as expectant heir, general or special of a living person); and as to *wills*; the expectancy of an heir apparent during the lifetime of his ancestor, which is less than a possibility, being a mere hope or anticipation, is expressly excluded by 1 Vic. c. 26, from the testamentary power of disposition thereby conferred. See also Watkins's Principles of Conveyancing by White, p. 220, (note) and 3 Mer. 667.

Now *B.*, at the time of his death, from which period his will took effect, had only a *hope or mere expectancy* on the courtesy of his father, *A.*;—he had not such an estate as by virtue of the 3d section of the act he could devise; or rather he was expressly prevented by this act from making any such devise.—Therefore I agree with your correspondent in his expression of surprise that any doubt should have been raised on this question; and I think it clear that the issue of *B.* take by virtue of the 33d section, and not *C.*, the stranger in blood. I have not Mr. H. Sugden's Treatise by me, and cannot confirm or otherwise your correspondent's information. I would suggest the question, whether, supposing your correspondent to be right, Sir E. Sugden's opinion is to be considered as coinciding with his son's.

V

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#### JOINT-STOCK COMPANY.—EXECUTION OF DEED.

Sir,

A joint-stock company being established, *A.* purchases shares in the same, on which he pays up the whole amount. He does not execute the deed of settlement himself, but gives a written authority (*not under seal nor stamped*) to a friend to execute the same in his name, which is done accordingly. Subsequently the company being involved, *A.* is called upon to pay more money. I should feel obliged if any of your numerous correspondents could inform me whether the execution of the deed of settlement of the company by *A.*'s friend is sufficient to hold *A.* liable under it.

A SUBSCRIBER.

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DOWER.

*A.*, a married man, sells to *B.* in fee a plot of freehold ground for 1000*l.*, or for a rent-charge

of 90*l.* per annum, the full value of the land. *B.* improves the ground: say he builds a cotton mill thereon at a great expense, and worth a rental of 600*l.* per annum: what dower is *A.*'s widow entitled to out of this land? Is it to one third of the rent-charge of 90*l.*? or to one-third of the improved rental of 600*l.*? It is presumed that no settlement has been made, that dower has attached, that the wife was no party to the deed, and that the full value or rental has been given by *B.* to *A.* for the land.

LXX.

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#### COURT OF EXCHEQUER.

Hilary Term, in the 3rd year of the Reign of Queen Victoria.

This Court will on Monday the 17th day of February next hold sittings, and will proceed in disposing of the business now pending in the New Trial Paper on the same day.

And on the following days, namely, the 18th, 19th, 20th, and 21st days of February; and on the same 21st day of February, and on the 22nd day of the same month, will proceed in disposing of the business now pending in the Special Paper.

(Signed)

ABINGER.

J. PARKE.

E. H. ALDERSON.

J. GURNEY.

R. M. ROLFE,

Read in Court, Jan.

29, 1840.

STEPHEN RICHARDS, Master.

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#### CANDIDATES WHO PASSED THE HILARY TERM EXAMINATION, 1840.

Name of Applicant.	Name and Residence of Attorney to whom articled, assigned, &c.
Alcock, Thomas Crawhall	Robert Wilson, Sunderland
Anstis, Bernard	Matthew Anstis, Liskeard, Cornwall; assigned to Edmund Hambly, Wadebridge, Cornwall
Barrett, George	James W. Barrett, Gray's Inn
Beanlands, Benjamin	G. Sheppard, Otley
Beckitt, Henry Hugh	Wm. Beckett, Doncaster
Birch, Andrew Robert	Wm. Slater, Manchester
Bisgood, Thomas	Charles Cook, 1, New Inn
Bluck, Edward	Robert Rodgers, Liverpool; assigned to John Morris, Manchester
Bond, James Wilfred	Charles Chatfield, 22, Cornhill
Bramley, T. Charlesworth	Charles John Shoubridge, 5, South Square, Gray's Inn
Brown, Henry Isaac	Thomas Dix, Bristol
Brown, Henry Edw.	James Wittit Lyon, Spring Gardens
Brownlow, Richard	Edmund Haworth, Bolton, Lancaster; assigned to Adam Haworth, Bolton
Bullmore, Henry Orlando	Francis Pender, and James Genn, Falmouth
Carthew, Edward	Henry Woolcombe, Plymouth

Name of Applicant.	Name and Residence of Attorney to whom articled, assigned, &c.
Catchpole, William Smith	Eleazar Lawrence, Ipswich
Chamberlain, Aylring	Daniel Howard, Portsea
Chilcot, John Gilbert	Henry James Leigh, Hammet St., Taunton
Clark, William Fox	James Baker Bainton, Beverley
Clavering, John	George Delmar, 46, Lincoln's Inn Fields
Cook, Henry	Thomas Thompson, Kingston-Upon-Hull
Cook, G. W. Francis	George Phillips Foster Gregory, 28, Poultry
Coombs, Thomas, the younger	Thomas Coombs, the elder, Dorchester
Cooper, John Martin	Thomas Thompson, Bishop Wearmouth ; assigned to George Smith Ranson, Bishop Wearmouth
Cox, Wm. the younger	Arthur Philip Groom, Henrietta-st., Cavendish-square
Crosse, Robt. Jennings	Frederick Chase, Luton, Bedfordshire
Crotty, Edward	Richard Hollier Atkinson, 37, Southampton Buildings ; assigned to Christopher Crouch, 37, Southampton Buildings
Davenport, William	Robert Southee, 18, Ely Place, Holborn
Davies, Edmund William	Baker Gabb, and William Woodhouse, Secretan, Abercavenny
Davis, Isaac	James Phineas Davis, 14, Charlotte-st., Bedford-sq
Davis, Thomas Hammond	Henry Harper, Kennington Cross
Dene, George Barbor	Wm. Lamb Hockin, Dartmouth ; assigned to Edward Dunserville Puddicombe, 64, Lincoln's Inn Fields
Dowling, John Frederick	Henry Earl, Andover ; assigned to Daniel Cunningham, 47, Craven Street, Strand
Duberly, George	Wm. Duberly, Dursley
Driffield, Walter Wren	Wm. Rowson, Prescott
Dyson, James Armstrong Francis	John Archbould, Thrapston
Edleston, Rich. Chambers	John Stanley, Newport
Evans, Charles	Thomas Evans, Broad Street ; assigned to John Burden, 27, Parliament Street
Everingham, Henry the younger	Thomas Bartlett, and Charles Oldfield Bartlett, Wareham ; assigned to Barry Parr Squance, 29, Coleman-street
Fisher, Charles	Joseph Fisher, Bury-st., St. James ; assigned to Thomas Hooper Law, Barnstaple, and assigned to Samuel Fisher, 25, Bucklersbury
Frodsham, Frederick	Robert Frodsham, Liverpool
Gardenor, Wm.	L. Morris, Carmarthen
Gaskoin, John	Bryan Holme, New Inn
Gibson, Charles Mair	Wm. Nicholson Hodgson, Carlisle, Cumberland
Gill, James	Robert Frodsham, Liverpool
Godden, John	Robert Bicknell, 38, Bloomsbury-square ; assigned to Geo. Waugh, 5, Great James-street, Bedford Row
Goode, Philip Benjamin	Philip Goode, Howland-street
Gosset, Montague the younger	Richard Roy, Liverpool-street
Green, Charles	Charles Aikin Holland, Northwich and Runcorn
Hardisty, Edward Brydges	John Swaine Sculthorpe, 43, Gt. Marlborough-st.
Harfield, Robert	Wm. Duke, Arundel
Hargreaves, John Geo.	John Brainwell, Durham
Harrison, Geo. Fred.	John Atkinson, Leeds
Hawksford, John	Wm. Manby, Wolverhampton
Hoare, Clotworthy Owen	John Orde Hall, 1, Brunswick Row, Queen-square, Bloomsbury
Holtby, John	Wm. Lackman, Lawrence-street, city of York
Hope, Thomas	Benjamin Hope, Wells ; assigned to James Beavan Meredith, 1, Heathcote-st.
Hucknall, Alfred	Wm. Blunt Fosooke, Loughborough ; assigned to Joseph Parker, Loughborough
Humble, George the younger	G. Teale Lister, Cleckheaton
Hume, John Penery	Robert Montague Hume, 8, Gt. Winchester-st. ; assigned to Edmund Maude, 8, Gt. Winchester-st., and assigned to Wm. Willoughby Gunston, 8, Gt. Winchester-st.
Hull, Fred. Shepard	Wm. Thompson, Liverpool ; assigned to John Buck Lloyd, Liverpool, and assigned to Wm. Henry Cotterill, 32, Throgmorton-st.
Hunter, John	John Anderson, Pybus, Newcastle-upon-Tyne
Iggulden, John the younger	John Mercer, Deal
Jarvis, Lewis Whincop	Lewis Western Jarvis, King's Lynn
Johnson, James	John Makinson, Manchester

<i>Name of Applicant.</i>	<i>Name and Residence of Attorney to whom articled, assigned, &amp;c.</i>
King, Paul John	Edward Robert Porter, 1, New Court, Middle Temple; assigned to Thomas Wright Nelson, 1, New Court, Middle Temple
Kingdon, Richard	Charles Kingdon, Holsworthy
Leech, Joseph	Wm. Stevens, 6, Frederick's Place, Old Jewry
Leonard, Robert	— Winterbotham, Tewkesbury; assigned to E. Blackmore, 1, Mitre Court Chambers, Fleet-st.
Leitch, Thomas Curr	John Lowry, North Shields
Lowe, William the younger	Samuel Danks, Birmingham
Mayo, John Ryall	John Pyne, Somerton; assigned to John Slade, Yeovil
Mercer, George	John Mercer, the younger, Ramsgate
Merrick, William	Wm. Thubrell, Bradford
Monkman, Henry William	Thomas Walker, York
Moss, Wm. Henry the younger	Wm. H. Rosser, Gray's Inn Place; assigned to Charles Frost, Kingston-upon-Hull
Mould, Ralph Allen	John Bridges, Red Lion square
Mullens, Richard	Wm. Belton, Crealock, 4, Regent-street, St. James's, Westminster
Newington, William John	Giles Miller, Goudhurst
Paget, William	Thomas Brown, Skipton
Palmer, Wm. H.	Wm. Evans, Haverford West
Perkinton, Joshua Furness	James Stansfield, Halifax
Phené, Phineas	Henry Goddard Awdry, Milksham
Pierson, James H. G.	Clement Govett, Tiverton
Pitman, Harry Harris	John Geare the elder, Exeter; assigned to Wightwick Roberts, 57, Lincoln's Inn Fields
Pitt, James	Thomas Lediard, Cirencester
Portmore, Charles Broadhurst	Edward Fisher, Ashby-de-la-Zouch; assigned to William Dewes, Ashby-de-la-Zouch
Pybus, Geo. Harrison	Wm. Pybus, Middleton Tyas, York; assigned to Thomas Henry Dixon, 5, New Boswell Court
Rayer, Edward	Joseph Cooper Stratford, Cheltenham
Rea, John	Wm. Dickson, Alnwick
Robinson, Thomas	Wm. Barker, Huddersfield
Robinson, Thomas	Wm. Rymer, Darlington
Sanders, John Thomas	George Saffery, Market Rasen, Lincoln
Scott, William Henry	Robert Bartlett, Chelmsford
Smith, John Oliver	Timothy Surr, 80, Lombard Street
Sparks, John	Isaac Sparks, Crewkerne
Stephenson, Mc'Carthy	John Stephenson, Newark-upon-Trent
Taddy, Charles	George Cook, Bristol
Thomas, George the younger	George Thomas the elder, Carmarthen; assigned to Samuel Walker, 29, Lincoln's Inn Fields
Tomlin, Ottiwell the younger	Ottiwell Tomlin the elder, Richmond; assigned to James Williamson, 4, Verulam Buildings
Towse, Roht. Beckwith	John Beckwith Towse, Fishmonger's Hall, London Bridge
Twynam, W. Edwin	Geo. Twynam, Winchester; assigned to Benj. Hope, Wells
Wake, William	Bernard John Wake, Sheffield
Walmisley, Edward	Archibald Keightley, 43, Chancery Lane
Walmisley, John Rich. Lambert	Walter Pridesaux, Goldsmith's Hall
Ward, William Webb	Charles Hen. Webb, Stafford; assigned to James Gay Hiers, Stafford
Wardroper, Edmund	Richard C. Wardroper the elder, Midhurst, Sussex; assigned to Charles James Palmer, Bedford Row
Waugh, Edward	George Saul, Carlisle; assigned to John Saul, Carlisle
Weddell, James Call	Robert Weddell, Berwick-upon-Tweed; assigned to Wm. Pringle, 3, King's Rood, Bedford Row
Whall, Robert	John Whall, Worksop
White, Sam. George	Cecil Proctor Wortham, Buntingford
Whitehouse, Joseph	Peter Williams, Holywell, Flint
Wightwick, Thomas Nortman	Julius Garbett, Shepherd, Faversham, Kent
Withington, Geo. Bancroft	Wm. Casson, Manchester
Woodrow, Jeremiah	Wm. Butt, Ryde

## SUPERIOR COURTS.

Lord Chancellor's Court.

**PRACTICE.—EXCEPTIONS.—ATTACHMENT.**  
*The delivery of exceptions to a bill for impertinence will not save a defendant from contempt for want of answer, unless an order to refer them be obtained before the time for answering expires. An attachment issued for want of answer, after the time has expired, is regular, although exceptions to the bill for impertinence were delivered the same day the attachment issued.*

This was a motion to discharge two orders of the Master of the Rolls; by one of which, made on the 16th of November, his Lordship refused, with costs, a motion made on behalf of the plaintiff to discharge an order obtained by the defendant to refer exceptions to the bill for impertinence; and by the second his Lordship discharged an order for an attachment against the defendant for want of answer.

Mr. Wakefield and Mr. Steere, in support of the motion, confined themselves to the first branch of it. The facts were these—there was a bill of revivor and supplement, and being in a country cause, the defendant, by the 8th of the orders of 1833, had ten weeks after appearance to plead, answer, or demur, not demurring alone. The time having expired on the 29th of October last, an attachment for want of answer was issued on the 7th of November. One question was, whether that attachment was regular. On the 6th of November the defendant delivered exceptions to the bill for impertinence, and on the 7th, he presented a petition at the Rolls for an order to refer them to the Master, which order he obtained, and served on plaintiff on the 8th. The lodging the exceptions in the Six Clerks' Office, even within time, was not material; nothing was effectually done until the order of reference was obtained. By the 11th of the general orders of 1831 no order shall be made for referring any pleading or other matter pending before the Court for scandal or impertinence, unless exceptions are taken &c., and unless such order be obtained within six days after the delivery of such exceptions. The defendant suffered the whole time allowed for answering to elapse, and eight days more, before he delivered the exceptions, and then he takes another day to deliberate about taking out an order to refer them. That was too late: he was bound by the 8th order to plead, answer, or demur, not demurring alone, in ten weeks. The taking exceptions was analogous to demurring alone. In injunction causes to stay proceedings at law, only eight days were allowed for answering. But if a defendant were to obtain six days more by filing exceptions at the end of the eight, then he would have fourteen days before the common injunction could be issued, the object of which might be frustrated by the defendant having brought his proceedings at law to an end. They cited *Ferror v. Ferror*<sup>a</sup> to shew that when the time

for answering had expired, a defendant cannot refer the bill for impertinence; and *Taylor v. Harrison*<sup>b</sup> to shew that by the construction put on the new orders, an order to refer an answer for insufficiency must not only be obtained, but must be served within the six days allowed by the fifth of the orders of 1833. To prevent an attachment or injunction, answer must be filed within the time prescribed by the orders; *Whitehouse v. Hickman*.<sup>c</sup> The plaintiff having no notice of any proceeding being taken by the defendant until he was served with the order to refer the exceptions, he had taken the usual course to issue an attachment. Even if the order to refer the exceptions had been duly obtained and served on the 7th of November, the attachment which issued on the same day would have preference, *Stephens v. Neale*.<sup>d</sup> The defendant had been in contempt from the moment the time for pleading, answering &c. expired. The plaintiff did all he could; he could not force the defendant to answer or except.

Mr. Chapman appeared to support the order to refer the exceptions.

The Lord Chancellor asked how the defendant after attachment issued against him could be heard at all, unless he came to discharge the attachment.

Mr. Chapman.—The Master of the Rolls discharged the attachment as irregular.

The Lord Chancellor thought the two orders ought to have been brought before him; he could not well judge of the regularity of one without the other.

Mr. Wakefield was willing to submit both orders to his lordship's consideration.

Next day Mr. Richards was heard in support of the orders.

The Lord Chancellor.—The defendant is irregular. According to the cases cited the ten weeks allowed to plead, answer, or demur, had elapsed. On the seventh of November an attachment was issued against him, he having done nothing but delivered his exceptions until the eighth, when he served the order to refer them. The defendant had nothing to urge against the regularity of the attachment. After the expiration of the two weeks allowed for answering, the defendant stood idle for eight days, without intimating any intention of exceptions till the very last day. After exhausting the whole time for answering and excepting, was he to prolong the delay for six days more, by delivering exceptions when the order says he shall answer within a certain time? If the defendant interposed to prevent the attachment, he should have proceeded regularly. The order of the Master of the Rolls discharging the attachment, is irregular. The order to refer the exceptions cannot be supported, and the plaintiff being regular, he is entitled to the costs of coming here to discharge that order.

*Petty v. Lonsdale*.—At Westminster, November 25, and at Lincoln's Inn, November 26, 1839.

<sup>a</sup> 1 Myl. & C. 274.

<sup>d</sup> 1 Madd. 550.

<sup>c</sup> 1 Sim. & Stu. 202.

## Queen's Bench.

[Before the Four Judges.]

## MALICIOUS PROSECUTION.

*The fact that a man was bound in recognizances to appear and prosecute A. is, in itself, no answer to an action afterwards brought by A. for an alleged malicious prosecution, if the original charge was in fact made without reasonable and probable cause.*

*A judge is not in such a case bound to leave it to the jury to say whether the bill of indictment was preferred from a malicious motive, or from a fear of forfeiting the recognizances.*

This was an action for a malicious prosecution. The plaintiff was a stone-mason, at Lewisham : the defendant was a gentleman of property, residing in that neighbourhood. In the month of October, 1838, the plaintiff was employed as a stone-mason by the defendant ; and in the execution of that employment was obliged to purchase some marble for the defendant, and cut it up. He received from the defendant, a sum of ten pounds, and he went with that money and purchased a quantity of marble which was sold to him for 9*l.* 1*s.* 6*d.* He returned the remaining 1*s.* 6*d.* to the defendant, and so far that affair was ended. After working some time for the defendant, the parties separated. The plaintiff had a claim against the defendant for certain work, which had been left unpaid ; and the defendant not paying him, the plaintiff caused a summons to be issued from the Court of Requests, to compel payment. This summons was served on the defendant on a Saturday, in the early part of May of last year. On the following Monday, a warrant was issued at the demand of the defendant against the plaintiff, on a charge of stealing marble from the defendant's premises. The defendant was bound over to prosecute. The plaintiff was tried and acquitted. This action was then brought : the cause was tried before Lord Denman, and the plaintiff recovered a verdict.

Mr. Kelly applied for a rule to shew cause why the verdict should not be set aside, and a new trial granted. The charge in the declaration is, that the defendant maliciously preferred an indictment against the plaintiff. That cannot be so, for the defendant was bound over to prosecute. [Mr. Justice Coleridge.—I left it to the jury to say whether there was any good ground for making the charge on which the recognizance was founded.] It need not be denied that if the record was properly framed, the plaintiff might have recovered, not merely for the charge before the magistrate, but also for the indictment itself. If a man maliciously prefer a charge of felony ; and by reason of that charge the magistrate commits the man, and makes the prosecutor enter into a recognizance, it is admitted that the party injured might recover in damages, as the injury would directly flow from the act of the party ; but then he must recover on a declaration

which truly states what is the cause of the damage he seeks to recover. [Lord Denman, C. J.—There is a statement that the defendant maliciously preferred a bill : that is proved in fact.] But in form, the defendant is not liable to be charged with that. Another objection here is, that when a party has once entered into recognizances, he is bound in law : he has not the liberty to withdraw ; but if after entering into recognizances he should even become convinced of the innocence of the party, he must still proceed to prefer the indictment. [Mr. Justice Coleridge.—Does not your argument go to this, that if a party is bound in recognizances, he can never be liable in damages?] It must be admitted that the argument does go to that extent. [Lord Denman, C. J.—But can any man have a right to put a fellow-subject into this situation, merely to avoid a pecuniary penalty ? If he knows that the person is innocent, he must submit to the penalty, and not make an unjust charge.] But the law itself does not allow a man of his own accord, to say that a person against whom he has once preferred a charge is not guilty of the charge ; he must submit it to the proper constituted authorities. At all events, the judge ought to have left it to the jury, to say whether the defendant had preferred the bill from malicious motives, or from the fear of forfeiting his recognizances.

Lord Denman, C. J.—It appears to me, that the first point is one of considerable importance, and it is one on which I have no doubt. It is supposed that a person cannot be guilty of a malicious prosecution, and preferring an indictment without reasonable and probable cause, if he is bound by recognizance to prosecute, although the recognizance was obtained in consequence of his making a malicious charge before a magistrate. But it seems to me that a recognizance so obtained will not prevent his responsibility, if the court and the jury should, on the trial be satisfied that such is the case. Then it is said that the judge did not sufficiently call the attention of the jury to the question, whether the defendant preferred the bill from a malicious motive, or from the fear of forfeiting his recognizances. My answer to that objection is, that the judge is not bound to put any such question to the jury. If the jury think that the original charge was malicious, that is sufficient.

Mr. Justice Littledale.—I perfectly agree with my Lord. With respect to the first objection, there are many cases in which the fact that a man was bound by recognizances to appear, would be a sufficient answer to an action for his having done so. As where for instance, a man saw a felony committed, and told the person who had been robbed, and that person after making the charge did not appear to prefer a bill, and the witness, who was bound to appear, did so. But even there, it would be an answer on the ground of being a reasonable and probable cause for the prosecution.

Mr. Justice Coleridge concurred.

Rule refused.—*Dubois v. Keats, H. T. 1840.*  
Q. B. F. J.

**Queen's Bench Practice Court.****INTERROGATORIES.—COMMISSION.—WITNESSES.—LIBEL.**

*A commission may be issued to Ireland for the examination of witnesses in an action of libel, although the names of all the witnesses are not mentioned in the rule.*

This was an action for a libel, alleged to have been published in the Morning Chronicle newspaper; and it was suggested on the part of the plaintiff that several of the witnesses, who were material to the action, so far as this case was concerned, were resident in Ireland. It was therefore proposed that those witnesses should be examined on interrogatories.

*Paget* now moved accordingly; but only the names of certain of the witnesses were mentioned in the affidavit on which he moved. It was prayed, however, that the commission should issue for the examination of other witnesses besides those named in the affidavit.

*Smith* shewed cause in the first instance, and contended, that the commission could only be allowed to go for the examination of those witnesses whose names were given, and could not extend in the general manner here required, to those witnesses with whose names the plaintiff, it appeared, was as yet unacquainted.

*Patteson, J.*—It appears to me that the case of *Diamond v. Vallance* is exactly in point. The marginal note of that case is “in an application to examine witnesses abroad, by a commission under 1 W. 4, c. 22, s. 4, the Court will allow the commission to go for the examination of witnesses not named in the rule, if the names of certain witnesses are given.” On the authority of that case, the present rule may be made absolute in the form required.

Rule absolute.—*Beresford v. Easthope*, H. T. 1840. Q. B. P. C.

• 7 D. P. C. 590.

**JUDGMENT AGAINST CASUAL EJECTOR.—SPECIAL SERVICE.—DAUGHTER.**

*In a case where a tenant in possession was bed-ridden, a service on the daughter, who was residing with the tenant, was held sufficient to justify the Court in granting a rule nisi for judgment against the casual ejector.*

In this case a service was effected in the following manner:—The person endeavouring to effect a service of the declaration in ejectment went to the premises in question, and there found that the tenant in possession was not to be seen, but a daughter of the tenant was there, residing with her mother, the tenant. The daughter stated that her mother was bed-ridden, and could not be spoken to.

*Kempson* moved for judgment against the casual ejector, on an affidavit stating these facts. The affidavit did not state that the deponent believed the information obtained from the daughter.

*Patteson, J.*—I think that on producing an affidavit from the deponent that he “believed” the statement made by the daughter, you may take a rule nisi for judgment against the casual ejector.

Rule nisi accordingly.—*Doe d. Frost v. Roe*, H. T. 1840. Q. B. P. C.

**JUDGMENT AS IN CASE OF A NONSUIT.—PEREMPTORY UNDERTAKING.—SITTINGS IN TERM.**

*Where a peremptory undertaking has been given to try at the first sittings in term, and which is not fulfilled; judgment as in case of a nonsuit may be obtained in the same term.*

In this case a rule for judgment as in case of a nonsuit was obtained, and discharged on a peremptory undertaking to try at the first sittings in the present term. The sittings passed without giving notice of trial, or putting down the cause for that purpose.

*Archbold* now moved, after the sittings had passed, for judgment absolute as in case of a nonsuit; under the circumstances, there was no objection to making the present application. A default in fulfilling that undertaking had been committed, and the opportunity of curing that default had been permitted to go by.

*Patteson, J.*—It is no objection to the application; a default has been clearly committed, and therefore you may take your rule.

Rule absolute.—*Ashton v. Johnson*, H. T. 1840. Q. B. P. C.

**EJECTMENT.—SERVICE OF DECLARATION.—DATE.—NOTICE.**

*Where a declaration in ejectment was wrongly intitled, and no date was attached to the notice of the declaration, so as to allow the tenant in possession to know the real term in which he should appear, judgment will not be allowed to be signed against the casual ejector.*

In this case, which was an action of ejectment, the declaration was entitled, “In the fourth year of our reign,” which period had not yet arrived, and there was no date to the notice at the foot of the declaration.

*Godson* moved for judgment against the casual ejector.—The affidavit of service shewed that the service had been strictly personal on the tenant in possession. He submitted that the peculiarities in the declaration were immaterial.

*Patteson, J.*—I think the defects in the declaration are not merely formal, but essential. Although the notice requires the party to appear in the next Hilary term, yet, as there is no date to the notice, the tenant cannot know that “Hilary” term is meant, for the declaration is wrongfully entitled. The present rule must therefore be refused.

Rule refused.—*Doe d. Rogers v. Roe*, H. T. 1840. Q. B. P. C.

## Common Pleas.

## AWARD.—ARBITRATION.—PAYMENT OF MONEY.—SUNDAY.

*It is no ground for setting aside an award, that the arbitrator has directed the payment of a sum of money to be made on a Sunday, although it would be an answer to an application for an attachment on the ground of the money not being paid on that day.*

This was an action on an agreement for not accepting the lease of certain premises, the good-will of a certain business, and stock in trade in the same. The declaration contained four counts. The first was a special count framed on the agreement; the second was for goods sold and delivered; the third was for money paid to the use of the defendant; and the fourth on an account stated. The defendant pleaded, first, non-assumpsit to the whole declaration. He then pleaded seven other pleas to the first count, and in them he traversed various allegations contained in that count. He pleaded, ninthly, to the first count, fraud, covin, and misrepresentation; tenthly, to the second and third counts a set off; eleventhly, to the second count a return of the goods. The cause came on for trial at the last Summer assizes for the county of Surrey, held at Croydon, before Lord Chief Justice *Tindal*. The cause was then referred to a gentleman of the bar, and he ultimately made his award at the latter end of last Michaelmas Term.

*Dowling* now moved to set aside the award. The arbitrator by his award directed a verdict to be entered for the plaintiff on the issue on the plea of non-assumpsit, so far as that applied to the first count in the declaration; and for the defendant so far as it applied to the other counts. He also found for the plaintiff on all the other issues in the cause. He then proceeded to assess the plaintiff's damages at 10*£l.*, on all the issues found for the plaintiff." This, it was submitted, was a bad finding, because damages could not be assessed for the plaintiff on the issues of set-off and the return of goods, the affirmative of the issue in those cases lying on the defendant. If the word "issues" was interpreted as meaning "counts," then the finding was equally objectionable, because the arbitrator had already found the issue on the second, third, and fourth counts in favour of the defendant.

*Tindal*, C. J.—The meaning of the arbitrator is that judgment should be entered up on those issues on which in point of law, it can be entered up. The intention of the arbitrator is sufficiently clear.

*Dowling* then objected, that the arbitrator had directed the costs to be paid on the 1st of December, which was on a Sunday. Payment of money must be considered as a step in a cause, or legal proceeding, when it was made pursuant to an award, and consequently was contrary to the provisions of the 29 Charles 2. A variety of cases has decided that any step in a cause taken on a Sunday, must be considered as illegal.

*Tindal*, C. J.—If the money is not paid on Sunday, and an application is made in respect of such non-payment, this objection would be a good answer to the application. I do not think it is any objection which will afford a ground for setting aside the award itself.

The other Judges concurred.

Rule refused.—*Hobdell v. Miller*, H. T. 1840. C. P.

## Exchequer of Pleas.

## TAXATION.—NOTICE.—MASTER'S DISCRETION.

*Taxation of costs may take place at Westminster, as well as at the Master's Office, according to the Master's discretion, and a notice to tax there is consequently good.*

*Erle* moved to review the taxation and set aside the writ of execution, and all subsequent proceedings in this case, for irregularity. The plaintiff's attorney served a regular notice for the taxation of costs on the 23d of November, 1839. The taxation, however, not being completed, notice of continuance was served on the evening of that day for twelve o'clock on Monday the 25th, at Westminster; before eleven o'clock on the morning of which day, defendant's attorney sent notice of his objecting to attend at Westminster; upon which the taxation was completed *ex parte*, and execution immediately issued.

*Erle* now contended, first, that sufficient notice of continuance had not been given; and secondly, that every taxation ought to be made regularly in the Master's Office; and therefore, that a party cannot be compelled to go to Westminster against his will for the purpose of attending one.

*Lord Abinger*, C. B.—This notice is sufficient for a continuance, as by the original notice, the party was fully apprised of the intended taxation, and prepared for it accordingly. As to the other objection, though it might be one for the Master to make, it can form no excuse for the attorney. It is only for the convenience of parties that the Masters in term time (during which this taxation was made) attend the office at all.

Rule refused.—*Blake v. Warren*, H. T. 1840. Exch.

## CHANCERY SITTINGS.

*After Hilary Term, 1840.*

## Before the Lord Chancellor.

AT LINCOLN'S INN.

Saturday Feb. 8	First Seal—Appeal Motions and Appeals and Causes.
Monday .. 10	
Tuesday .. 11	
Wednesday .. 12	
Thursday .. 13	
Friday .. 14	
Saturday .. 15	
Monday .. 17	Appeals and Causes.
Tuesday .. 18	
Wednesday .. 19	
Thursday .. 20	
Friday .. 21	

Saturday	..	22	The Second Seal—Appeal Motions and ditto.
Monday	..	24	
Tuesday	..	25	
Wednesday	..	26	
Thursday	..	27	
Friday	..	28	
Saturday	..	29	
Mouday March	2		Appeals and Causes.
Tuesday	..	3	
Wednesday	..	4	
Thursday	..	5	
Friday	..	6	
Saturday	..	7	The Third Seal—Appeal Motions and ditto.
Monday	..	9	
Tuesday	..	10	
Wednesday	..	11	
Thursday	..	12	
Friday	..	13	
Saturday	..	14	
Monday	..	16	Appeals and Causes.
Tuesday	..	17	
Wednesday	..	18	
Thursday	..	19	
Friday	..	20	
Saturday	..	21	
Monday	..	23	
Tuesday	..	24	The Fourth Seal—Appeal Motions and ditto.
Wednesday	..	25	
Thursday	..	26	Petitions.
The Sittings will close on the 3d day of April.			
Before the Vice Chancellor,			
AT LINCOLN'S INN.			
Saturday Feb.	8	The First Seal—Motions.	
Monday	..	10	The Last Paper of Causes to be disposed of previous to Pleas, Demurrs, Exceptions, Causes, and Further Directions.
Tuesday	..	11	
Wednesday	..	12	
Thursday	..	13	
Friday	..	14	
Saturday	..	15	
Monday	..	17	
Tuesday	..	18	The Second Seal—Motions.
Wednesday	..	19	
Thursday	..	20	
Friday	..	21	
Saturday	..	22	
Monday	..	24	
Tuesday	..	25	
Wednesday	..	26	Pleas, Demurrs, Exceptions, Causes, and Further Directions.
Thursday	..	27	
Friday	..	28	
Saturday	..	29	
Mouday March	2		
Tuesday	..	3	
Wednesday	..	4	
Thursday	..	5	The Third Seal—Motions.
Friday	..	6	
Saturday	..	7	
Monday	..	9	
Tuesday	..	10	Pleas, Demurrs, Exceptions, Causes, and Further Directions.
Wednesday	..	11	
Thursday	..	12	
Friday	..	13	
Saturday	..	14	
Monday	..	16	
Tuesday	..	17	

Wednesday ..	18	
Thursday ..	19	
Friday ..	20	
Saturday ..	21	
Monday ..	23	
Tuesday ..	24	
Wednesday ..	25	The Fourth Seal—Motions.
Thursday ..	26	Petitions.

The Vice Chancellor will hear Short Causes and Unopposed Petitions previous to the General Paper every Friday during the Sittings. The Sittings will close on the 3d day of April.

## Before the Master of the Rolls.

## AT THE ROLLS.

Saturday Feb.	8	Motions.
Monday ..	10	
Tuesday ..	11	
Wednesday ..	12	
Thursday ..	13	
Friday ..	14	Pleas, Demurrs, Causes,
Saturday ..	15	Further Directions, and
Monday ..	17	Exceptions.
Tuesday ..	18	
Wednesday ..	19	
Thursday ..	20	
Friday ..	21	
Saturday ..	22	Motions.
Monday ..	24	
Tuesday ..	25	Pleas, Demurrs, Causes,
Wednesday ..	26	Further Directions, and
Thursday ..	27	Exceptions.
Friday ..	28	Petitions in Gen <sup>l</sup> Paper.
Saturday ..	29	
Monday March	2	
Tuesday ..	3	Pleas, Demurrs, Causes,
Wednesday ..	4	Further Directions, and
Thursday ..	5	Exceptions.
Friday ..	6	
Saturday ..	7	Motions.
Monday ..	9	
Tuesday ..	10	
Wednesday ..	11	
Thursday ..	12	
Friday ..	13	
Saturday ..	14	
Monday ..	16	Pleas, Demurrs, Causes,
Tuesday ..	17	Further Directions, and
Wednesday ..	18	Exceptions.
Thursday ..	19	
Friday ..	20	
Saturday ..	21	
Monday ..	23	
Tuesday ..	24	
Wednesday ..	25	Motions.
Thursday ..	26	Petitions in Gen <sup>l</sup> Paper.

## Court of Exchequer.

*Sittings in Equity in Serjeant's Inn Hall,  
after Hilary Term, 1840.*

Mr. Baron *Alderson*.

Monday Feb.	3	Of Marquis of Waterford, by Order.
Tuesday ..	4	
Wednesday ..	5	
Thursday ..	6	
Friday ..	7	
Saturday ..	8	

Tuesday ..	11	Petitions and Motions.
Wednesday ..	12	Pleas, Demurrers, Exceptions, Further Directions, and Causes. Lord Abinger.
Thursday ..	13	Petitions and Motions. Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Friday ..	14	Pleas, Demurrers, Exceptions, Further Directions, and Causes. Mr. Baron Alderson.
Saturday ..	15	Causes.
Monday ..	24	Petitions and Motions. Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Tuesday ..	25	Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Wednesday ..	26	Causes.
Thursday ..	27	Causes.
Friday ..	28	Causes.
Saturday ..	29	Causes.
Monday March 2		Petitions and Motions. Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Tuesday ..	3	Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Wednesday ..	4	Causes.
Thursday ..	5	Petitions and Motions. Any matters standing over which may be specially appointed.
Friday ..	6	Any matters standing over which may be specially appointed.

**COMMON LAW SITTINGS.****Queen's Bench.***Sittings after Hilary Term, 1840.***MIDDLESEX.**

Saturday Feb. 8	Common Juries.
Monday Feb. 10 and daily to	
Thursday Feb. 13 inclusive.	Special Juries.

**LONDON.**

Adjournment day, Friday, February 14.

The Court will sit on Monday Feb. 10th, for Common Jury Causes, but as the Common Jury Causes are so numerous in Middlesex, and the entry is not large in London, the Special Jury Causes will be postponed in Middlesex severally a day, and the Court will remain there on Friday and Saturday.

**BUSINESS FOR EASTER TERM.**

At the rising of the Court on Tuesday afternoon, Lord Denman made the following announcement. "Next Term we shall hear motions—so long as there are motions for New Trials to occupy us, and then the Pereemptory Paper; then, most likely, we shall take the Special Paper and Crown Paper in order. We mean to give every open day to the New Trial Paper, and certainly we shall proceed with perfect strictness as to the order in which cases stand."

**Common Pleas.***Sittings after Hilary Term, 1840.***MIDDLESEX.**

Thursday Feb. 6 and daily to	Special Juries.
Wednesday Feb. 12	

**LONDON.**

Adjournment day, Friday, February 14.

**LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.****House of Lords.**Copyholds Enfranchisement. Lt. Brougham.  
[In Select Committee.]**PRIVATE BILLS.**

No Petition will be received after the 6th March.

Nor Report of Judges thereon after 22nd May.

**House of Commons.**

To amend the Law of Copyright.

Mr. Serjeant Talsonrd.

To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tannah.

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

Lord J. Russell.

To extend Freemen and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.

To amend Tithes Commutation Act.

[For second reading.] Sir. E. Knatchbull.  
Vagrants' Removal.

[For second reading.]

Small Debt Courts for

Aston,	Liverpool,
Birkston Ash, &c.	Tavistock,
Brighton,	Newton Abbott,
Bolton,	Wakefield Manor.
Marylebone,	

Summary Conviction of Juvenile Offenders.

[For second reading.] Sir E. Wilmot.

To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

**THE EDITOR'S LETTER BOX.**

The Court of Queen's Bench has intimated its intention of framing a rule, by which parties moving for rules to *quash Coroner's Inquiries* will be required to state upon such rules the points of objection intended to be insisted upon. This was mentioned in the case of *Stockton and Darlington Railway Company* case, on the 30th January.

If J. L. will read the several recent articles in this work on the subject of the examination, he will find an answer to his question, so far as any regulation exists.

We cannot insert Queries indiscriminately, but useful points arising on Acts of Parliament on important decisions will be placed in the "Student's Corner" when our space permits. The answers to them should be concise.

The Quarterly Analytical Digest of all reported Cases, down to the present time, will be published next week.

# The Legal Observer.

SATURDAY, FEBRUARY 15, 1840.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE REVENUES OF THE INNS OF COURT.

We have great pleasure in recording that at three out of the four Inns of Court handsome entertainments were given on her Majesty's wedding-day to their respective members, and we believe that the Inns of Chancery were equally loyal. The defaulter on the present occasion was the Middle Temple,—*why* we have not been informed. At Lincoln's Inn there was the most numerous party; at the Inner Temple the best cheer; but at all, as we understand, the feast passed off with great hilarity and propriety.

We much approve of these professional festivals, which tend to promote general good feeling among all classes, but while we are quite willing to give the benchers due credit for this piece of liberality, we must take this opportunity of restating our complaint as to the present application of the revenues of the Inns of Court. In our earlier volumes much space was devoted to this subject, and such of our readers as have any curiosity in the matter can refer to them. It was fully proved, as we think, that the present benchers of the Inns of Court hold the property now vested in these societies as trustees, for the benefit of their members; that at present they do not apply this property according to the intentions of their founders; and that it would be of great advantage to the members of these societies, and to law as a science, if they were so applied. We have seen no reason to change our opinions, and have not recently said much respecting them, from the apparent hopelessness of seeing them acted on: still we do not entirely despair. We admit that our hope lies in the

benchers themselves, rather than in a pressure from without. When we consider that as a body they are a most able and honourable class of men, who have at heart the permanent interests of their profession, we would fain hope that at some time or other they may see that they may do more for its benefit than they do at present.

We have heard, indeed, a rumour that at one Inn of Court, proverbial for its riches, it has been seriously proposed that the benchers should now proceed to divide some portion of the trust property among its present members, or at any rate *declare a dividend*. The future ingress of members into that society was proposed to be stopped, or at any rate rendered more difficult, and a *rest* was to be taken in the profits. All admitted after a certain day were to have no right to the property then acquired, and thus the existing members might have had a quiet slice of the accumulated funds. However pleasant this might be in the first instance, we are rather inclined to think that in the long run it would be found to be followed by those disagreeable consequences which attend the appropriation of the property of others.

We have already proposed that public lectures by eminent persons should be delivered in the halls of the Inns of Court, to their respective members gratuitously, and that examinations should be made before degrees be granted. We have now further to point out that the benchers might greatly assist the law as a science, if they were to promote the compilation of valuable legal works of research. There are many books which, although they may not offer a sufficient encouragement to a bookseller to undertake their publication, yet would be of great benefit to the profession if compiled.

There are also many members of the profession who, although they may be unqualified for the more brilliant walks of the profession, yet might be here advantageously occupied. We venture to throw out this suggestion, with a sincere belief that the learned persons who act as bENCHERS are really desirous of benefitting the profession of which they are the ornaments.

### THE BUSINESS OF THE HOUSE OF COMMONS.

THE business of the House of Commons, which peculiarly concerns our readers, is not so much that which is transacted in the House, as that which is done in the parts adjacent—the committee rooms. Two important changes have taken place as to this in the present session. In the first place the act of last session for the Trial of Controverted Elections (2 & 3 Vict. c. 38; see *ante*, p. 34,) having come into operation, the names of all the members of the House were called over, and the following excuses from serving having been made at the time, were allowed:—Certain members on account of their being upwards of sixty years of age; certain members from absence and ill health. The Attorney General until Easter, “from the peculiar circumstances of the business of his office.” Lord John Russell, Colonial Secretary, the Chancellor of the Exchequer, and Lord Palmerston, Foreign Secretary, from their official employments. Certain other members, as being petitioned against; and lastly, certain other members, as not having been returned fourteen days, and liable therefore to be petitioned against. These were the only excuses either attempted to be made, or allowed by the House. On the 7th of February the General Committee of Elections was sworn. They are Mr. Greene, Mr. Wm. Miles, the O’Connor Don, Mr. Ord, Mr. Strutt, and Mr. John Young.

The other alteration is as follows:—On the 11th of February, in pursuance of the recommendation of the Report of the Select Committee on Private Business of last session,<sup>a</sup> a Select Committee was appointed, to which all Divorce Bills should be referred. This was partially tried in the last session, but the present committee consists wholly of lawyers, and their appointment is an important step, as we think, towards affording a better tribunal for disposing of

the private business of Parliament. The committee consists of Mr. Freshfield, Mr. Hayter, Sir Edward Sugden, Dr. Nicholl, Sir Charles Grey, Mr. Darby, Mr. Blake, Mr. James Stewart, and Mr. Serjeant Curry. Five to be a quorum.

### CHANCERY REFORM.

THE state of the Courts of Chancery continues to attract much public attention. Returns have been moved for respecting the Six Clerks’ and Master’s Offices, which, if made, will prove the truth of the statements which have appeared from time to time in these pages. Sir Edward Sugden gave notice that he would, on an early day, call the attention of the House to the state of the Court of Chancery; but on the next day Lord John Russell, in answer to a question respecting the Judicial Committee of the Privy Council, said that the Lord Chancellor would shortly introduce into the House of Lords a bill for the improvement not only of the Judicial Committee, but of the Courts of Equity. We rejoice to hear this, although it is only what we have led our readers to expect. We believe that we can state from good authority, that the Lord Chancellor’s scheme will embrace the abolition of the Equity Exchequer, the appointment of two new Equity Judges, the remodelling the appellate jurisdiction of the House of Lords, as well as a very considerable reform both in the Masters’ and Six Clerks’ Offices. We await the new bill with much expectation; and we apprehend that until it is introduced no other step will be taken in this matter.

### THE PROPERTY LAWYER.

#### DISTRESS FOR RENT-CHARGE.

THERE are at common law three manner of rents,—rent-service, rent-charge, and rent-seck. These are the general divisions of rent, but the difference between them in respect of the remedy to recover them is now totally abolished. 4 G. 2, c. 28; 2 Blackstone by Stewart, p. 19-21<sup>st</sup>. But according to the older authorities, ~~when~~ a rent is severed by the act of the party, the tenant shall not be liable to several distresses. Bro. Abr. Distresses, 60; Gilb. on Rents, 164; *Roll v. Osborn*, Hob. 25; *Wetton v. Shirt*, Cro. Eliz. 742. However, this

<sup>a</sup> See 18 L. O. 331, 402.

opinion is now overruled. In Bac. Abr. "Rent M." it is laid down that if A. possessed of a term for twenty years, leases it for ten years, reserving 30*l.* rent, and afterwards devises 20*l.* of the rent to each of his three sons, equally to be divided, this is a good devise, and each of his sons shall have an action of debt for his third part, though the reversion remains entire, for there is nothing in the nature of the thing to hinder such a division or apportionment; and in *Colborne v. Wright*, 2 Lev. 239, it was held that by conveyance of devise or fine to uses, a rent-charge may be divided without the assent or attornment of the tenant, and so as to make him liable to several distresses, because his assent or attornment is not necessary to the perfection of those conveyances; and this case has been followed in a recent case, in which Lord Abinger, C. B., among other points, adverted to this, and thus clearly expressed the opinion of the Court:—

"The principal point in the case was, whether one tenant in common of a rent-charge could distrain for his undivided share, it being contended that, upon these pleadings it must be taken that the rent in question was a rent-charge, at least not a rent-service, which, it is admitted, might be divided, so as to leave a power of distress incident to each portion. And we think that the assumption was proper; but on a review of the authorities, which were very ably discussed at the bar, we are of opinion that a rent-charge may be divided by the act of the party, and that the assignee of each portion may distrain for it. That it was severable by act of law, was admitted to be clear; and also it was agreed that it could be divided with the attornment or express consent of the person chargeable with it; but it was contended, that without such attornment or consent it could not be done, on the ground that the party would be made liable to several distresses for the same rent. It has, however, been decided by a majority of judges, with reference to a rent service disconnected from the reversion, that it might be divided by will, in the case of *Ards v. Watkins*, Cro. Eliz. 637, 651; though the same objection was stated, but it was answered, that it was the tenant's own fault, and if he paid the rent, he would avoid it; and it was also said that the devise would enure without attornment; and a similar point was decided by the whole Court in *Colborne v. Wright*, 2 Lev. 239, with respect to a rent-charge; and it was held that by the conveyance of devise, and fine to uses, the rent might be divided

without the consent or attornment of the party, because his consent is not necessary for the perfection of these conveyances. It is true that the divided portions of the rent-charge had reunited in one person, in whose right the action was brought, but the case was not settled on that ground, but on the general proposition laid down by the Court, that the rent might be divided. We think, therefore, on the authority of these decisions, that the rent was legally divided in this case by will, and by deed operating under the Statute of Uses; and as attornment, since the statute of 4 Anne, c. 16, is no longer necessary to the perfection of any grant, we should probably hold that the form of the conveyance would not make any difference. And this view of the case agrees with what may be inferred from Bacon's Abridgment. 'Rent, M.' to have been the opinion of Chief Baron Gilbert on this point." *Rivis v. Watson*, 5 Mee. & W. 255.

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## NEW BILLS IN PARLIAMENT.

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### AMENDMENT OF TITHES COMMUTATION ACT.

This is a bill further to explain and amend the acts for the Commutation of Tithes in England and Wales. It recites that by the 6 & 7 W. 4, c. 71, s. 67, it is enacted, that from the first day of January next following the confirmation of any apportionment in any parish under the said act, the lands of such parish shall be absolutely discharged from tithes, except as in the said act is provided in certain cases, and instead thereof there shall be payable to the person entitled to such tithes, and in that behalf mentioned in the said apportionment, a sum of money in the nature of a rent-charge issuing out of the lands charged therewith; and that by 1 Vict. c. 69, s. 11, provision is made for the lands in a parish being discharged from tithes, (except as in the said first recited act is excepted) by agreement between the parties to any parochial agreement or supplemental agreement, from certain days preceding or following the confirmation of the apportionment, instead of the said first day of January next following such confirmation; but so that the first payment of the rent-charge be made and recoverable at the expiration of six calendar months from the time from which such lands are discharged from the payment of tithes; and by an act passed in the last session of parliament, 2 & 3 Vict. c. 62, s. 10, the commissioners appointed under the said first recited act are enabled by their award, and the land-owners and tithe-owners by supplemental agreement, in like manner to fix the period at which any rent-charge shall commence.

And that after an agreement for, or award of, rent-charge has been made and confirmed by the said commissioners, much delay is often occasioned in settling and adjusting the apportionment before the same can be confirmed by the commissioners, and by reason of the lands remaining subject to tithes or composition for tithes in the meanwhile, such tithes in many cases continue to be taken in kind, or may be so taken on the determination of any composition existing at the date of such agreement or award, notwithstanding that the parties have agreed for, or the commissioners awarded, the sum which, under the provisions of the said acts, ought to be taken as the permanent rent-charge payable instead of such tithes; and great hardship is thereby occasioned, contrary to the spirit and intent of the said acts.

The proposed enactments are :

1. That in every case where an annual sum by way of rent-charge shall have been fixed in any parish, instead of the tithes of such parish, either by agreement or award, it shall be lawful for the said commissioners, by a declaration in writing under their hands and seal of office, or the hands of any two of them, at any period after the confirmation of any such agreement or award respectively, and before the confirmation of the apportionment to be made in respect of the rent charge so fixed, upon the application in writing of any land-owner, and upon his giving such security to the said commissioners as they shall in their discretion think sufficient for the due payment to the parties entitled thereto of such rent-charge from the period to be fixed in such declaration, to declare that the lands in such parish shall be discharged from the payment or render of tithes, or composition or rent instead of tithes, from such day as the said commissioners shall fix in such declaration in that respect; and that, instead thereof, the annual payment or rent-charge so fixed by any such award or agreement respectively, shall be paid to the person entitled to the same by half yearly payments, commencing and calculating from such period of discharge from tithes named in such declaration as aforesaid.

2. That in every such case, if the land owner giving security shall not make due payment to the person entitled to the same according to the tenor of such security, it shall be lawful for the said commissioners from time to time, as and when any half-yearly payment of such rent-charge shall accrue, and the same or any part thereof shall remain unpaid for the space of twenty-one days from any day fixed for payment thereof, and notwithstanding judgment shall have been previously issued in respect of any former arrears, to sue for and recover any such half-yearly payment, or so much thereof as shall from time to time remain unpaid in respect thereof, against the land owner giving such security, by taking out a summons, returnable before a judge at chambers, to compute what is due in respect of such rent-charge; and it shall be lawful for any judge before whom such summons shall be returnable, on

production of such security, and on proof by affidavit of the amount so due as aforesaid, and of the service of such summons on such land-owner or on any occupier of any of the lands of such land-owner, in any such parish, by leaving the same at his place of abode, to order judgment to be signed at the suit of the said commissioners, and execution to issue in due course against such land-owner accordingly, or his goods, chattels and estates, for the amount so due, and the costs of such application, judgment and execution, as in the case of an ordinary judgment in an action of debt; and such security shall be available against such land-owner giving the same up to and including the half-yearly payment accruing due next before the confirmation of such apportionment, and shall be in full force notwithstanding any change in the party entitled to such rent-charge.

3. That in every such case the said commissioners shall make due inquiry as to any payment of rent-charge made by any such land-owner, in respect of such security, previous to the confirmation of such apportionment of such rent-charge, and shall indorse on such apportionment a certificate of every such payment; and such land-owner shall thereupon, after a confirmation of such apportionment, be entitled to recover the amount specified in such certificate against the lands of the said parish subject to such rent-charge, in the proportions fixed by such apportionment, by distress and entry on such lands respectively, and shall have the like remedies or modes of recovery as are given to the owners of rent charge for recovery thereof in the said recited acts, or any of them.

4. If security insufficient, arrears may be recovered as if accruing after the apportionment.

5. Security to be free of stamp duty.

6. Extension of power to fix sum to be paid after determination of composition, and period for commencement of rent-charge. 2 & 3 Vict. c. 62, s. 10.

7. Extension of powers to substitute fixed rent-charge instead of contingent rent-charge, 2 & 3 Vict. c. 62, s. 11.

8. Extension of powers in respect of lamas and common lands, 2 & 3 Vict. c. 62, s. 13.

9. That so much of the said lastly-recited act as relates to the vesting of an estate of inheritance as to any lands in any ecclesiastical tithe-owner and his successors, notwithstanding the same be made by any corporation sole or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from or incapable of making any such valid conveyance or assurance, extends to trustees or feoffees of parish property, or of property held by or vested in such trustees or feoffees for parochial or other uses or purposes, in the nature of a parochial or public trust.

10. That in any case where the ~~parties~~ a parochial agreement, or the ~~commissioners~~ in the case of an award, shall have proceeded, according to the provisions of the said recited acts, to ascertain and fix a rent-charge in any

parish wherein any of the lands shall at the time of making such agreement or award be cultivated as hop grounds or market gardens, and in case of proceeding by award when notice shall have been given that the tithes of any of the lands so cultivated should be separately valued, it shall be lawful for the said parties to declare in such agreement, or for the said commissioners to declare in such award, the amount of extraordinary charge per acre to be in future payable in respect of hop grounds and market gardens or any district therein respectively in such parish; and the rent-charge mentioned in every such agreement or award respectively shall, subject to the addition of such acreable extraordinary charge, consist of the amount agreed for or awarded in respect of the tithes in such parish, other than the tithes of the lands cultivated therein as hop grounds and market gardens respectively, and the ordinary charge in respect of the lands so cultivated as hop grounds and market gardens respectively added thereto.

11. Extraordinary rent-charge need not be distinguished on separate lands in apportionment.

12. Half-yearly payments of rent-charge to be regulated by averages declared in January preceding, under 6 & 7 W. 4, c. 71, s. 67.

13. Commissioners may adjudicate parochial boundaries on requisition of land-owners of any parish, 2 & 3 Vict. c. 62, ss. 33, 34, 35.

14. This act to be taken as part of recited acts, and of 1 & 2 Vict. c. 64.

substance of his materials, we select the subject of *Law Agents*, of whose employment he thus treats :

"The employment of a law agent may be verbal.

"Putting into his hands the service copy of a summons is employment to defend; but he has no recourse on a nominal defender when he receives the service copy and takes his instructions from the party interested.

"And employment is inferred when a party signs a pleading.

"Also when the client knows of a suit and does not disclaim it.

"And putting into the hands of a law agent a bill is employment to recover payment.

"And employment to recover a debt includes all measures within the exercise of a sound discretion.

"But employment to conduct a suit before an inferior Court does not authorise an advocacy to the Court of Session.

"And, excepting against her husband, a married woman cannot authorize a suit.

"And an authority to conduct a suit is no authority to compromise it, the compromise binding the agent only.

"And a party is not liable for the expense of measures not authorized, though the obligation of another party for whom he was cautioner should be thereby discharged.

"But a party has been held bound by an amicable judgment consented to by his counsel in Court.

"And a law agent is liable for the charges of another law agent whom he employs in the affairs of his client.

"But not in so far as the agent employed may take his instructions from the client.

"And local practice may relieve a law agent from the charges of another law agent so employed."

Of their "Accounts" or *Bills of Costs*, (as they are called on this side the Tweed) he says,—

"The account of a law agent for conducting a suit is not due till taxed by the auditor of Court.

"And honouring a draft for the amount does not exclude taxation.

"Nor a writing by the client holding the accounts to be correct.

"And an agent who acts without a license has no claim either for remuneration or outlays.

"But the objection is excluded when a decree *in foro* is obtained before it is made.

"And where expenses had been found due to a pursuer, decree for the amount as taxed was allowed, though it was objected that his agent had acted, during the currency of the account, without a licence.

"And when expenses are found due in a cause, the agent is entitled to judgment in his own name.

"And though judgment in his own name should not be obtained, intimation to the party

## NOTICES OF NEW BOOKS.

*The Pocket Lawyer: a Practical Digest of the Law of Scotland, Mercantile Law of Great Britain, and Forms regulating the Law of Scotland.* By Alexander Macallan, Esq., Advocate. Cannon, Edinburgh; Butterworth, London.

We noticed some years ago an early edition of this work. The author's plan, since that time, has been considerably improved. It originally comprised a selection of those branches of law only which are of more prominent interest than others; but it is now much extended, and contains a tolerably complete Digest of the Law of Scotland, with the Forms applicable to such Law, and a Digest of the Mercantile Law of Great Britain. The latter portion of the work will, no doubt, be useful in Scotland: here we are already in possession of very able Digests. Many parts of the Law of Scotland ought to be known to the English practitioner, and the present volume in a concise form supplies the information required. As an example of the ability with which Mr. Macallan has condensed the

liable will prevent compensation between the parties.

"And after a favourable judgment, or a judgment indicating success, the agent on that side is entitled to prosecute the cause to a conclusion, to recover his expenses, though the cause should be compromised by the parties.

"But expenses found due to one party may be compensated with expenses found due to the other.

"And the agent has no preference over the money found due to his client in his own right, and an assignation will not prevent compensation on a counter-claim.

"And an arrestment is preferable to the claim of a law agent over the expenses found due to his client.

"A law agent has also a lien or right of retention, in security of his account, over the papers of his client in his possession.

"And his lien is preferable to an heritable security, though completed by infestment before he obtained possession of the papers.

"And he is not bound to exhibit the papers at the suit of his client, though only to prove a fact.

"And the lien is not lost by producing the papers in a process.

"Nor by sending them to another agent in the business of his client.

"But he is bound to exhibit the papers at the suit of a third party, when the exhibition is not to benefit his client.

"And he has no lien over papers in a process not previously in his hands.

"Nor over papers not put into his hands professionally.

"Nor over titles only put into his hands to say whether he will accept them as a security for a separate debt.

"Nor over papers belonging to third parties, put into his hands by his clients.

"Nor over papers put into his hands by his client, after the client is bankrupt.

"And he has no lien for cash advances, but only for his business accounts.

"Or accounts contracted by him to other agents in the business of his client.

"When his claim is constituted, he is not bound to exhibit or deliver the papers till he be paid.

"But when not constituted he is bound to deliver them on security for payment when constituted."

Regarding their professional responsibility, Mr. Macallan thus describes the state of the Law :

"A law agent who neglects the business entrusted to him is liable for the loss sustained by his client.

"So when he neglects to negotiate a bill, he is liable for the debt.

"Also when he loses a bill.

"Also when he loses a process containing a judgment *in foro*.

"Also when he neglects to alight a debtor in prison, and the debtor in consequence gets free.

"Also when he neglects to intimate an assignation.

"Also when he neglects duly to inquire into the solvency of a cautioner in a suspension.

"Also when he lends the money of his client on insufficient security without searching the records.

"Also when he is aware that the security on which he lends the money of his client is imperfect.

"And where the agent of the borrower of money knew that the security given for the money was inadequate, he was held liable to the lender.

"And an agent was held liable for money lent on a security which he had completed in a form not established in practice, and which was postponed in a competition.

"And where a purchaser resiled from an improbatative missive of sale, the agent entrusted with the preparation of the missive was held liable in damages to the seller.

"And an agent who, after being employed to get security for a debt, obtained from the debtor a good security for a debt due to himself, and an imperfect security for the debt due to his employer, was held liable in the debt due to his employer.

"And an agent who was instructed to do diligence, to put his client on an equality with other creditors, and who stopped in the course of his measures, without informing his client, was held liable in the sum which the measures would have secured.

"And an agent was held liable in damages who neglected to extend a writing on stamped paper.

"And an agent is not relieved of responsibility though he act gratuitously.

"And it is no answer to a neglect of duty that funds were not supplied, if the client was not informed that funds were wanted."

Each of these doctrines or points of law is accompanied by a reference to the case in which it has been propounded or recognised, but we omit them as unnecessary to the English reader.

## POWER OF APPOINTMENT IN PURCHASE DEEDS.

*To the Editor of the Legal Observer,  
Sir,*

I WILL give your correspondent "A Country Conveyancer," p. 259, credit for all possible sincerity in denouncing the complacency with which the members of our profession tolerate the needless lengthening of deeds; but I beg to pardon me for doubting how far the maxim of minimizing brevity can bear an advantage in comparison with the prudential copiousness of demands,—whether looked at as regards the immediate saving of expense, or the avoidance of future litigation.

He objects to the introduction of the ap-

pointment. If its utility were in fact as circumscribed as it appears to him, unquestionably, much reason exists for its abrogation; but where did he learn its only purpose was to bar the wife's dower? I can understand that such is the object of the *uses*; but I never before heard, the exercise of the power was governed by any such end. Surely, so bold an innovator should have reflected, before penning an undeserved insinuation against the integrity or knowledge of his fraternity.

The case of *Doe v. Jones*, 10 B. & C. 457, followed by *Skeels v. Shearly*, 6 Law J., (n. s.) ch. 21, before the V. C., and 7 L. J., (n. s.) ch. 3, before the L. C., established that the exercise of the power in favour of a purchaser, gave him priority over the judgment creditors of the vendor, although the purchaser had notice of the judgments; as a consequence, the search for judgments became unnecessary, a saving of expense, ample as a compensation for a few extra folios, to say nothing of the freedom from all risk of oversight. So, where the owner was desirous of mortgaging, (a transaction done always in the expectation of being undone), the expensive search was again avoided. The convenience resulting from the power in family arrangements must be allowed to have some weight in the minds of those, who do not look to the vesting an estate in a client as the sole end in view, but allow themselves to be further influenced by a consideration of how it is to be got out of him, and the innumerable modifications it will probably be subjected to, while in his hands. I forbear troubling you with a detail of the virtues of the power, as I am sure, to a majority of your readers, it would be unnecessary and tedious; in candour, I must not omit to state, that the cases of *Doe v. Jones*, and *Skeels v. Shearly*, are, as respects the immediate purpose for which I cited them, interfered with by the recent act 1 & 2 Vict. c. 110; but your correspondent's reflections arose, "in the course of his practice in conveyancing," which I must suppose extended to a period more remote than the latter end of 1838, when the above act came into operation.

The addition of the release is one of those acts of caution, I hope to see always influence the profession; for although not an inveterate adherent to old form and precedent, I should be the last to encourage the temerity requisite to stake a client's money upon so delicate an assurance as a bare appointment.

A further and greater objection urged by your correspondent, is the utter impossibility of a conveyance containing an appointment, ever being made a root of title. He might have stated his reasons for coming to such a conclusion, instead of leaving us to imagine what particular misapprehension he was labouring under. Why an appointment is more impracticable than a feoffment, I cannot conceive. It may be true, the exercise of a power supposes its existence, but not more so than the conveyance of an estate by a man, (I care not by what assurance), leads to the conclusion he acquired it by some legitimate means: in

either case, the inference is the same; in neither case is notice of the mode of acquisition involved, much less of the contents of the particular deed under which he took the estate. No doubt the *recital* of a deed, is notice of its contents, but as an appointment no more compels a recital than a feoffment, there can be no advantage in the adoption of the latter. Possibly your correspondent has been struck with Mr. Burton's precedent for a conveyance in fee, "I give this land to you and to your heirs," and admires the conciseness, although that virtue may be obtained only by a sacrifice of recitals, covenants, and other trifling incidents to a modern assurance. That recitals may be superfluous, in the curious deduction of title contained in your correspondent's letter, may be admitted. I say curious, because I do not believe that one title in a thousand consists of so smooth and harmonious a string of transfers, so singularly free from all devises, descents, and settlements, despite the liability of an estate, in the course of fifty years, to some of those antidotes to simplicity. But assuming that change of description in the property renders a recital to preserve identity indispensable,—that subinterests call for some mode of explanation, and that the ordinary dealings of man preclude the hope of a general banishment of recitals, is there no efficacy in a contract, to control the purchaser's right of calling for deeds? Where is the solicitor or conveyancer who cannot make a root of title for a vendor, notwithstanding the deeds for the last century are all entangled? I am sure your correspondent will not respond in person.

Your correspondent's panacea for imaginative evils in the feoffment—as a conveyance of land held under a title as set forth by him,—has the merit of consistent simplicity and rarity, and in its innocence from all useful application to the more complicated affairs of modern times, may be regarded as interesting by the lover of feudal formality. Nobody will quarrel with its use—a title would not be objectionable because a feoffment appeared in the abstract. But its strongest admirer cannot be blind to its inapplicability to one case in a hundred—nor to its numerous inconveniences where applicable. Should the estate be distant, a journey by vendor and vendee must be made, or in substitution, the expensive delegation by deeds of power to give and to accept livery, must occur. The expulsion of tenants and their families to make the livery effectual—the publicity of the proceeding, always unpleasant and frequently distressing—and other objectionable requisites, all, all are trifles unworthy of a thought so as to obtain "a root of title." The feoffment has not even the redeeming merit of dispensing with the lease for a year stamp. There is no loop-hole in it to escape that duty. Still, I admit it is harmless when applicable; but the few occasions upon which its use is expedient do not justify the insinuation that its general adoption is avoided because of its cheapness.

J. B. W.

## SELECTIONS FROM CORRESPONDENCE.

### LAW OF ATTORNEYS.

*To the Editor of the Legal Observer.*

Sir,

In answer to the letter of your correspondent E., under this head, in your *Observer* of the 25th January last, I must admit, that on looking to the cases he has there cited, my opinion was against the *whole* claim of *A.* and *B.* being set off; but I am now inclined to think they *may* claim a set off for the whole amount; as it is laid down in the authorities I have referred to that a person conducting proceedings in a Court of which he has not been admitted *in the name of an attorney of that Court*, is no objection to the costs, for the Court has the security of one of its officers—the proceedings mentioned by *E.* were of course conducted *in the name of A.* Again, where a party employed two attorneys, partners, to conduct a cause for him in the Palace Court, and one only of them was admitted on the rolls of that Court, it was held that an action in the common form lay at the suit of them *both*, though the retainer was given to the attorney of the Palace Court *only*. See *Arden v. Tucker*, 4 B. & A. 815; and 1 Nev. & Man. 759.

### TAXING COSTS DURING THE HOLIDAYS.

*To the Editor of the Legal Observer.*

Sir,

Allow me to call the attention of the profession generally to a subject of some considerable importance, as affecting the interests of themselves and their clients.

By the stat. 3 & 4 W. 4, c. 42, s. 43, the holidays mentioned in 5 & 6 Edw. 6, c. 3, are abolished, except (*inter alia*) "the day of the nativity of our Lord, and the three following days." The stat. 1 Vict. c. 30. makes no alteration on that point. The following case will illustrate the grievance of which I complain. A plaintiff obtains a judgment in debt for want of a plea against a defendant for 100*l.*, which judgment is signed on the 24th December, (no master being then in attendance) and cannot tax his costs, (without which, it is well known, no execution can be issued) until the 6th day of January. In the mean time the plaintiff has certain information of the defendant being at his family's residence in Wales to spend the Christmas, with about 400*l.* *in his pocket*, and that he is expected to embark at Holyhead for Dublin, on the 5th or 6th January; thus the defendant can openly remain in the country till the last moment, and the plaintiff be defrauded of the fruit of his judgment. This is not a *feigned* case for the purpose of calling the attention of the profession to the subject; and the injury that may occasionally result to the commercial public from no Master being continually in attendance to tax costs, is incalculable.

My suggestion is, that one of the 15 Mas-

ters should attend to tax costs in such cases, where the parties might suffer injury by delay.

It may be as well to mention that the provision in the 1 & 2 Vic, c. 110, as to arresting the defendant on a Judge's order is of no use in the case mentioned, as we have no direct evidence of the defendant's intention to leave the country.

AN ATTORNEY.

[Are not the holidays sufficiently reduced in number? If they were further diminished, we fear the fraudulent debtor would resort to new expedients or greater secrecy.—Ed.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRACTICE.—RECEIVER.—INJUNCTION.

*This Court may appoint a receiver to get in testator's estate in aid of an administrator of the Ecclesiastical Court, pendente lite; but such receiver is not to go upon property of the testator claimed by one of the parties under an assignment independently of the will; nor will the Court restrain such party from receiving the rents of the property comprised in the assignment.*

The bill stated, among other things, that Harriet Loyd, Spinster, of Rose Cottage, Kensington, lately deceased, made her will in December 1834, and thereby, after bequeathing several legacies (not necessary to be here mentioned), she gave unto William Toby (a defendant) 200*l.* and she gave the plaintiff her house, Rose Cottage, and several other houses held by her under long leases at Brompton, together with all her furniture, books, money in the public funds, &c., and all the residue of her estate and effects whatsoever for his absolute use, and she appointed plaintiff and said W. Toby her executors; that the defendant, Frederick Godrich, a surgeon, residing near Rose Cottage, became acquainted with said testatrix in 1835, and he alleged that in the month of October in that year, she revoked her said will, and made another, by which, after giving various legacies, amounting altogether to about 400*l.*, she gave the said Toby and Godrich 2000*l.* to each, and appointed them her executors; that after executing said alleged last will, the testatrix went to reside at the house of defendant, Godrich, and, as alleged, made her last will (revoking all former wills) in February 1836, whereby, after substituting similar bequests to several legatees named in her former will, she gave 500*l.* to the said W. Toby, and 200*l.* to Godrich, son of the defendant. The defendant did not attain the age of 21, but if not, he was restricted that sum to sink into the defendant's estate, which she gave to the defendant Godrich absolutely, and she appointed him sole executor. The bill alleged that at the time of the date of the first will, (1834) the testatrix was quite imbecile, and incapable of

making a will up to the time of her death in 1838, at the age of 95 years, and during the last four years of her life, the defendant, Godrich, had complete control over her and her property, and he took possession of the same, and of her deeds and papers after her death, and he propounded the said will (of 1836) in Doctors' Commons for probate, against which the plaintiff entered a caveat; and he alone, W. Toby refusing to join him, instituted a suit there against Mr. Godrich, to establish the will of 1834, and resist that of 1836. The bill, after further alleging that the defendant pretended that the said Harriet Loyd had assigned to him by deed three leasehold houses, &c. at Brompton, prayed that an account might be taken of the rents and profits of the said leasehold houses, estates, and hereditaments, and all other the personal estate and effects of the said Harriet Loyd, possessed or received since her decease by or for the use of the said Mr. Godrich, and that the same may be received by this Court, pending the said litigation in the Ecclesiastical Court, and that some proper person may be appointed to collect the rents and profits of the said leasehold estates, and to get in all other the personal estate of the said H. Loyd, and that the same, and particularly so much thereof as came into the hands of the said F. Godrich, may be secured and paid into court, and vested, &c., until the proceedings in the Prerogative Court shall be brought to a conclusion; and, in the meantime, that F. Godrich be restrained by injunction from disposing of the said leasehold premises, or any part thereof, and from receiving the rents and profits of the same, or intermeddling with, or disposing of any part of the personal estate of the said Harriet Loyd.

A motion was made before the Vice Chancellor for a receiver, and for an injunction as prayed by the bill, and his Honour granted them both.

Mr. Wiggram and Mr. Bethell, in support of an appeal in behalf of Mr. Godrich, from so much of the Vice Chancellor's order as went to restrain him from receiving the rents of the leasehold houses, and to appoint a receiver over them, read numerous affidavits to shew that the defendant took an assignment of the houses, in consideration of the payment of a sum of 980*l.*, and that sum was paid to the testatrix, who returned it as part payment of three years' contemplated board and lodging at the price of 400*l.* a-year. The testatrix lived long enough to enjoy the benefit of this anticipatory payment, and a further sum was then given in the same manner out of her income, which was nearly twelve hundred a-year. Describing in the most positive terms any intention he had had to sell the houses, they contended that the Court ought not to restrain him from collecting the rents until such time as the plaintiff should choose to bring his legal rights to a trial. In all cases of this description the personal property of the deceased, by means of a receiver; but the property in these houses was not a part of the personal estate of this testatrix, to be dealt

with by the Ecclesiastical Court, but the property of the defendant under an assignment, the validity of which could not be tried in any question raised with respect to the will.

Mr. K. Bruce and Mr. Russell on the other side argued, that it was the duty of the Court under such circumstances as the present, to preserve all the personal property of the deceased until the question at issue—whether the defendant had worked on the mind of the deceased so as to induce her to make a will in his favour, and to execute the assignment under which he claimed the leasehold houses,—was fairly decided. This was a case full of suspicion, considering the very advanced age of the testatrix, her removal after her first will to the defendant's house, and then altering her will, and giving the defendant—a stranger to her before that time—and to his family, such benefits as he claimed, not only by her will, but by an assignment in her lifetime, as he alleged. Upon the case made by the bill, the property must be held to have belonged to the deceased up to the time of her death. The contest was purely between plaintiff and Godrich. Either must be appointed executor. If the allegations in the will be supported, the defendant must be held to have obtained the property fraudulently. And this court had jurisdiction to appoint a receiver over all the property of deceased for its protection pending the suit.

Among the numerous cases referred to on both sides, were *Walker v. Woollaston*,<sup>a</sup> *Atkinson v. Henshaw*,<sup>b</sup> *Ball v. Oliver*,<sup>c</sup> *Watkins v. Brent*,<sup>d</sup> *Edmunds v. Bard*,<sup>e</sup> *Murr v. Littlewood*.<sup>f</sup>

The Lord Chancellor now gave judgment. The jurisdiction of appointing a receiver to protect the property of a testator *pendente lite* had been originally assumed by the Court of Chancery under the impression that an administrator appointed by the Ecclesiastical Court had no power to collect and protect the property of a deceased person pending a contest in that court. After, however, it was decided in the case of *Walker v. Woollaston*, that an administrator appointed by that Court *pendente lite*, had power to protect the property, and to maintain actions for debts due to the deceased. The Court of Chancery had not nevertheless abandoned its jurisdiction of appointing a receiver in aid of the Ecclesiastical Court. In the present case both parties claimed probate of the estate of the testatrix; although it might turn out that neither of them was entitled; and the defendant claimed also to take certain leasehold houses under a deed of assignment, independent of his claims under the will. The defendant, therefore, claimed adversely to the estate of the testatrix. The case relied on in support of the order of the Vice Chancellor was that of *Ed-*

<sup>a</sup> 2 P. Wms. 576.

<sup>b</sup> 2 Ves. & B. 85.

<sup>c</sup> 2 Ves. & B. 96.

<sup>d</sup> 1 Myl. & C. 97; 11 Leg. Obs. 59.

<sup>e</sup> 1 Ves. & B. 542.

<sup>f</sup> 2 Myl. & C. 454; and 13 Leg. Obs. 454.

*wards v. Bird*, decided by Sir Thomas Plumer very soon after his becoming Vice Chancellor. Although no one could question the ability of that learned Judge, or deny him the merit of having exhibited great learning and acuteness, united with unwearied industry in the exercise of his judicial duties, yet it could not be supposed that he would have given the weight of his assent to an order so irregular and so contrary to principle, if he had at the time been more conversant with the practice of this Court. This was the more clear, as it appeared from the report that Sir Thomas Plumer's attention was not fully drawn to the nature of the application made to him in consequence of the defendant not having appeared. If, however, the deliberate authority of that learned Judge could have been cited in favor of such a practice, still it was one so contrary to principle that his Lordship could not give it his assent, and he was fortified in this opinion by a decision of Lord Hardwicke, in *2 Atkins*. The order made in this case by the Vice Chancellor for a receiver in aid of the Ecclesiastical Gourt with respect to the matters in contest there must stand; but with respect to the leasehold houses which the defendant claims under the assignment, the order for the injunction and receiver must be discharged as to them.

*Jones v. Godrich and another*. — At Westminster, Nov. 21, 22, and 23, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### HABEAS CORPUS. — PRIVILEGE OF PARLIAMENT.

*The House of Commons has the power of committing for contempt for breach of its privileges.*

*A return to a writ of habeas corpus stating that "A. B. having been guilty of a breach of the privileges of this House," is a sufficient statement of the offence for which he is committed.*

*The warrant need not set out with greater particularity the nature of the offence.*

*Though if the warrant stated an insufficient cause of commitment, as by alleging some frivolous contempt, this Court would enquire into it. This Court has no jurisdiction to do so where the statement is in general terms, that the party has been guilty of contempt.*

In this case John Evans and John Whelton, Esquires, Sheriff of Middlesex, had obtained a *habeas corpus cum causa*, to be directed to Sir William Gossett, the Sergeant-at-Arms, commanding him to bring up the bodies of Messrs. Evans and Wheelton, now detained in his custody, together with the cause of their detention.

Sir W. Gossett appeared in Court with the bodies of the prisoners, and handed in a return, which set forth that Messrs. Evans and Wheelton were detained in his custody by

virtue of a warrant directed to him by the Speaker of the House of Commons, which stated a resolution of that House declaring that these gentlemen "having been guilty of a breach of the privileges of this House, be committed to the custody of the Sergeant-at-Arms, and that Mr. Speaker do issue his warrant accordingly," and it then, in virtue of such resolution, ordered the Sergeant-at-Arms to receive into his custody the said Messrs. Evans and Wheelton.

Mr. Richards, Mr. W. H. Watson, and Mr. Kennedy took exceptions to the return for insufficiency; first, as not stating what the alleged breach of privilege was; next, as not directly declaring that there had been a breach of privilege committed, but as merely declaring it by way of recital as "having committed," &c.; and further, that the contempt was not stated to be a contempt of the House, but only a contempt of the privileges of the House; and lastly, as not shewing any jurisdiction to commit—it not appearing on the return that Mr. Shaw Lefevre, who had signed the warrant, was the Speaker of the House, or that he had issued this warrant from the House of Commons. They also contended that this not being a criminal matter, the Court was bound under the 56 Geo. 3, c. 100, s. 3. They referred to the judgment of this Court in *Stockdale v. Hansard*,<sup>a</sup> and to affidavits to shew that the sheriff had been committed by the House for executing a writ of *fit. fa.* and paying over the money under a legal command from this Court.

After a short consultation among the Judges, Lord Denman said, it appears to me necessary to declare, that the judgment delivered by this court in last Trinity Term, in the case of *Stockdale v. Hansard*, is, in all respects, perfectly correct. This Court then decided that there was no power in England which was above being questioned by the law; that the manner in which the privilege was there claimed by the late House of Commons, placed privilege on a footing of unquestionable and unlimited power. To all those opinions, then deliberately formed and expressed, I now, after full time for consideration, distinctly adhere, and all those opinions, in my conscience I believe to be true. On that occasion we took the law for our guide, and we shall resort to the same authority now, in deciding the case which is now brought before us on this writ of *habeas corpus* and the return.

This is a writ of *habeas corpus*, calling on the Sergeant-at-Arms of the House of Commons to bring up the bodies of two gentlemen who have been imprisoned on the Speaker's warrant. That warrant is returned to us as the cause of their detention; and the only question for us now to consider is, whether that warrant is, in point of law, a *good cause* for their detention. There are three objections made to the form of the warrant.

The first of these objections is, that there

was no direct adjudication of the contempt. The expression in the warrant is, that the sheriff "having committed" a contempt of the privileges of the House of Commons, it was resolved that they should be committed to the custody of the Sergeant-at-Arms. It was observed that this was not a direct statement of fact, and it was argued that the ~~simplistic~~ "having" could not be allowed to have that effect. It does so happen that in a recent case from an inferior court, we gave that effect to a similar expression, and allowed a statement by way of recital to be considered as a direct allegation of fact. Then the consequence is, that in doing the same thing, we shall be merely adopting an enforcement of the ordinary law. It cannot be doubted that if the house is stated to have resolved that a contempt having been committed, the statement is equivalent to saying that a contempt has been committed, and a resolution of that house to place in the custody of the Serjeant-at-Arms the individual guilty of committing that contempt is an adjudication against him.

The second objection is, that though the House of Commons adjudicated that the party had committed a contempt, and therefore that he should be committed to the custody of the Serjeant-at-Arms, yet there is no order on the Speaker to issue his warrant for that purpose. I must say that I do not think that that is at all necessary. We must take notice that the Speaker is an officer of the House of Commons, and that when the House of Commons adjudges that a contempt has been committed, and decides that the party committing the contempt is to be taken into custody, the Speaker will be authorised from that instant, and without any positively expressed direction, to issue his warrant to carry the resolution of the house into effect.

The third objection to the form of it is, that the warrant not being dated from the House of Commons, and the name of the House not being specified in the warrant, it does not appear that "this house" is the House of Commons, but may be some other house, such as the House of Lords. I do not think that there is any force in this objection. The warrant recites the resolution of the House, refers to no other house, and speaks of "this House" throughout. I think therefore, that there is enough to shew that the House against which the contempt has been committed is the House by whose authority the warrant is issued and the parties are taken into custody. Then again, we see that the Serjeant at Arms certifies to us this warrant, and returns to us that it was in obedience to this warrant that he took these parties into custody, and that he now detains them; and he certifies that he does all this under a warrant issued "under the hand of the Speaker of the said House." Now, there is only the House of Commons mentioned, and I cannot for a moment allow myself, so to trifl[e] with a plain, intelligible, and clear document, as to say, that I can entertain any doubt upon the matter.

The fourth objection taken is, that this is not

said to be a contempt of the House, but only of the privileges of the House. To that I answer by referring to the cases of the *King v. Burdett*,<sup>b</sup> in which the same expression has been used, and in which that ~~expression~~ has been held good and sufficient. It seems to me, therefore that all these verbal criticisms must fall to the ground, and that on the face of the warrant we cannot help seeing that this is a committal for contempt, and that it is made by the authority of the House of Commons. If that is so, then we come to the great objection, which is that the facts out of which the commitment arose are not fully set out so as to enable us to judge whether there is a proper ground for that commitment. It may be admitted that words of this sort have generally appeared in cases of this class, so that it is correct to say that the cases in which the facts have not been specified appear in number to be but few. I will mention, however, one case, that of Sir *Francis Pemberton* and Sir T. *Jones*,<sup>b</sup> who were committed by the House of Commons in 1689, in consequence of a judgment which they give in their court; a judgment as just, as reasonable, as lawful, and as necessary for honest men and good lawyers to give as any upon record, but for which these two Judges were confined under a warrant for contempt, and sent into custody by the House, where they remained till the end of the session. I mention that case chiefly in order to correct a mistake of no small importance, for I feel for the honour of this profession, and I believe that, after all, the fabric of society itself will be found to rest most safely in the value set upon personal character. In the resolution of the House of Commons to which I allude, it has been supposed most erroneously that Lord Holt concurred. It is a mistake to suppose so. It is also a mistake to suppose that the resolution to commit these Judges was adopted in the Convention Parliament. The committal occurred in the year 1689. Lord Holt was made Lord Chief Justice in April of that year, and this resolution to commit these two judges was not made till July of the same year. It was impossible therefore for him to have concurred in it. Having set right that mistake, I now pass to the cases of *Brass Crosby*,<sup>c</sup> of Sir *Francis Burdett*,<sup>d</sup> and of Mr. *Hobhouse*,<sup>e</sup> where, upon the authority of the *Shaflesbury* case, such a distinct statement of the causes was held to be unnecessary. It was so expressly held in the *Shaflesbury* case.<sup>f</sup> That case is correctly enough stated to be open to observation upon various grounds, but it is not open to observation upon this particular ground, nor have I ever heard any observation made upon it in this respect till this day, ex-

<sup>b</sup> See their case stated 14 East 101 *et seq.*

<sup>c</sup> 2 W. Bl. 754; 3 Wilson, 188.

<sup>d</sup> 5 Dow. 165; 14 East, 1, 154, 163; 4 Taunt. 401; 13 East, 27.

<sup>e</sup> 2 Chit. 207; 3 Barn. & Ald. 420.

<sup>f</sup> 2 St. Tr. 615, 622; 1 Mod. 144.

cept as to the extent to which the doctrine in that case was applied in *The King v. Paty*. In that case, three judges said that a commitment for contempt was not to be questioned, even if the cause of the commitment, as stated, was not sufficient. Lord Holt, who differed from the other three judges in the opinion as to the sufficiency of the cause of contempt as stated in that case, did not question the doctrine, that though the facts were not set forth, the allegation that the commitment was for contempt would be sufficient, and he declared that in such a case he should not feel himself authorised to ask questions and seek into the motives for which the committal had taken place. So that it seems a striking fact in favour of this doctrine that Lord Holt, who disputed the sufficiency of the facts in that case, never once said that the facts themselves required to be set out. Another authority is *Murray's case*,<sup>g</sup> where the warrant was in the same terms, and there the warrant was held good. Then comes the case of *Burdett v. Abbott*, in 1810. There is not any case which ever appeared on the books which is entitled to such great weight as that, whether in respect of the great learning of the judges or of the counsel, or of the number and frequency of the discussions in and out of Parliament, and the extraordinary caution of the judges, and the great light which must have been thrown in all possible quarters on the subject, enabling them to avail themselves of the fullest information upon it. In that case there is a passage in Lord Ellenborough's judgment which is most remarkable. He says something like this, for I have not the book by me at this moment—"I am pressed with an extreme case, and am asked whether it is possible that the House of Commons should go to such a length? My answer is, that it is not decent to suppose such a case; but what occurs to me on the subject is this—that if either house should commit for contempt, without informing me on what ground that commitment is made, I should not feel justified in revising such a decision. If, on the other hand, they stated to me such a ground as convinced me that they had no right to do the act, I should know how to do my duty." That is a plain doctrine. If they state a general contempt, this Court is bound by the statement; but if they enter into particulars, Lord Ellenborough clearly laid it down, and Mr. Justice Bagley followed him in the declaration, that the judges would act on the principle which Lord Holt stated in Paty's case, that if particular facts were stated which were insufficient to support the commitment, they would order the release of the party committed. But then there is this doctrine most clearly declared that, in case of a statement of a cause of committal made in general terms, this Court is bound by it. The subsequent case of Sir J. Hobhouse was to the same effect. I feel bound to say, with respect to ourselves, that there is not one of us who expressed an opinion on the late occasion of *Stockdale v. Hansard*, who did not intimate the same opi-

nion, though the state of that case did not require us fully to declare it. Passages of my judgment in that case have been referred to in argument, as tending to show that if, on the committal for contempt, there should be shown to us some cause clearly insufficient and illegal, such as fishing in the pool of a member, or other things of that description, such statement would be open to revision. That doctrine that no statement need be made I admit to have asserted, but that does not in the least contradict the general proposition. Reference has been made to the case of *Lord Shaftesbury*, but when it is said that that case is the foundation of all the rest, and that the judges in all subsequent cases were controlled in their opinion by that case, I must say that I think that statement to be erroneous. Every Court, of course, refers to the latest decision, but there is something in the nature of the Houses of Parliament which does invest them with this power, and the *Shaftesbury case* happened to be the most recent instance in which it was exercised, and to that case, therefore, reference was most frequently made. Instances have been properly brought before me in argument of acts of illegality committed by the Crown, which the judges were bound to set aside, and if they had not done so they would have committed a high offence towards the country, and would have justly forfeited their reputation. But there are no cases in which the Crown has rights, where those rights cannot be enforced by law. The prerogative of the Crown is a part of the law, and the Crown has its recognised officers, who must enforce its rights. Those rights are therefore well defined by law. A deliberative assembly is in a different position. It must have the power to vindicate its own privileges by its own means, and it cannot exercise those means but by having recourse to the process of contempt. In *Burdett v. Abbott* that privilege of committing for contempt was not pretended to be confined to the two Houses, but was said to belong to every Court in Westminster Hall, and was therefore one which the highest body in the land could not possibly be deprived of. There is no doubt without such a power they would be obstructed in their proceedings, and would be put down, if they could not of themselves judge of the circumstances which called it into exercise. Without entering into small discussions of a verbal nature, whether the House of Commons is a Court, I think that its right to commit is clear. I acknowledge its authority, and am aware that the House of Lords, when sitting on writs of error from us, sit as and for the whole body; and I deem that the functions of neither assembly can go on properly unless each is properly protected in the exercise of them. There must be certain principles which no Court can question, which are necessary for the protection of one against the other. This was brought out in the most singular manner by the test of the question put by Lord Eldon to the judges in the House of Lords,<sup>h</sup> in the

case of *Burdett v. Abbott*. When his Lordship came to consider the case, which was one where Sir Francis Burdett had sued the speaker for sending him to prison on a warrant committing him for contempt, his Lordship put the question as to the right of the Court of Common Pleas to make such a committal, and, supposing that no reason was stated on the face of it, he asked whether this Court would inquire into such a committal, and the sole answer of all the judges was, that such a thing could not be done, and Lord *Eldon* with the concurrence of Lord *Erskine*, and without a dissentient voice raised in the House of Lords, put that case on the analogy between the House and a Court of Westminster Hall, and decided it on that analogy. We must presume that whatever any Court, and much more either House of Parliament, takes on itself solemnly, and under the responsibility of great legal authority, to declare to be a contempt, that that is a contempt. Some affidavits have been produced in this case, and it has been intimated that they can be used, because this is not a criminal case. I do not think that that is the meaning of the 56th Geo. 3. Any person complaining of being imprisoned, has always brought his case before us by affidavit, and the return to the writ has shewn whether he was lawfully or unlawfully imprisoned. If it is shewn on the face of the return to be lawful, there is an end of all argument in favour of the discharge. The production of a good warrant makes a complete end of this case. We are not at liberty to enter into the question whether there is a real ground of contempt, for that would give us the power which I have already denied that we possess. We are not justified in entering into the supposed motives, and speculating as to the probable reasons of the House of Commons in coming to such a conclusion. We find such a conclusion distinctly expressed, and we must be bound by it. Indeed I think that, according to the language of the cases, and especially that of the Judges in *Burdett v. Abbott*, it would be unseemly and indecent to suspect the House of Commons of suppressing any facts, the statement of which would tend to show, in a Court of Law, that a subject had been improperly deprived of his liberty; and if, in violent times, this should ever appear to be the course pursued by the House of Commons, I am sure that it would be a course which, upon reflection, that House would extremely regret, considering it both as unwise and unjust. It would be offensive to the House to think that, merely for the sake of avoiding a disclosure, such as would give a subject his freedom, the House had avoided stating the reasons of his committal, desiring to take a poor advantage of a party, and wilfully to keep this Court in the dark. It would be monstrous to consider that such could be the case under the advice of men of great ability and learning, and I for one will not readily presume such to be the case. I cannot suppose that injustice would first be committed, and then that the House would

say, we will make an insufficient statement of facts in order to keep the Court in the dark. I know that in *Bushell's* case the Recorder *Jeffries* might have had recourse to such a line of conduct, but I will not believe that it has been or will be again adopted. This, however, has been supposed in the course of the argument; but I cannot think that such will ever be the course of a great public body, amenable to public opinion. In conclusion, I must say that I do not see any ground on which these gentlemen should be released from their imprisonment. According to all the authorities, the return seems to me to be sufficient; and I am bound, by that law which alone I can look at, and by which I am required to declare that the return is sufficient, and the warrant set out on the face of it is good.

Mr. Justice *Littledale* expressed his full concurrence with Lord *Denman* both as to the propriety of the judgment in *Stockdale v. Hansard*, and as to the reasons for declaring the return to this writ of *habeas corpus* sufficient; as did also Mr. Justice *Williams* and Mr. Justice *Cateridge*.

Sheriffs remanded. H. T. 1840. Q. B. F. J.

#### Queen's Bench Practice Court.

##### AWARD.—ATTACHMENT.—LACHES.

*Where a party delays for four years after making an award before he applies for an attachment, the delay ought to be accounted for on affidavit.*

In this case the submission to arbitration was made a rule of Court in 1836, and the award was made on the 9th May in the same year, directing the delivery of a bill of exchange.

*Martin* now moved for an attachment against the defendant for the non-performance of the award.

*Patteson, J.*—I cannot grant this application. The party should have come to the Court earlier, or have given some reason for so long a delay.

Rule refused.—*Story v. Gally*, H. T. 1840. Q. B. P. C.

#### Exchequer of Pleas.

##### JUDGES' POWER.—STAYING PROCEEDINGS.—COMPULSORY SETTLEMENT OF ACTION.

*A Judge at Chambers has now power, without the consent of the parties, to stay proceedings on payment of debt and costs.*

*Barstow* moved to set aside a Judge's order, on the ground that the Court or a Judge has no power to make such an order as that in question, without the consent of both parties. It was an action on a bill of exchange, and the defendant, before declaration, had obtained an order of *Gurney, B.*, that on payment of the bill with interest and costs within a limited time, proceedings should be stayed; the plaintiff, in default of such payment, to be

at liberty to sign final judgment. The order was not obtained by consent, nor was the money paid in pursuance of its terms, although the costs were taxed under the order.

*Barstow* contended, that should a bankruptcy or insolvency take place, great inconvenience must arise from such a course.

Rule *nisi* granted.

*Chandless*, on a subsequent day, shewed cause, and submitted that the Court or a Judge at Chambers has always power to stay proceedings where the justice of the case requires it. It is a power exercised every day, especially in cases where a plaintiff is called on to give security for costs, when, as there is no means of punishing him by attachment for disobedience, the Court stay all proceedings until he complies with the terms imposed.

*Lord Abinger*, C. B.—A Judge has no power to make an order of this kind, except either where the party is already under terms to plead, or with the consent of the opposite side.

*Alderson*, B.—There could be no doubt of the power of the Judge to stay proceedings, if the money had been paid. Cases like this frequently present themselves at Chambers, and it is usual for Judges to endeavour to settle them on reasonable terms. But they can go no farther than recommend a particular course to be adopted by the parties; they have no compulsory jurisdiction.

*Rolfe*, B., concurred

Rule discharged on terms.—*Reynolds v. Sherwood*, H. T. 1840. Exch.

#### SIMILITER.—WAIVER.—IRREGULARITY.

*A similiter by the party whose pleading it is, requires to be dated.*

*The objection to a want of a date is not waived by not opposing a judge's order for a writ of trial on that ground.*

This was an action of debt for a sum less than 20*l.*, to which the defendant pleaded *nullumquam indebitatus*. An order had been obtained from *Rolfe*, B., for setting aside the replication for want of a date.

*Dyndeswell* now moved to set aside this order on two grounds:—First, the *similiter* is not a pleading within the meaning of 1 R. G. H. T. 4 W. 4,<sup>a</sup> and therefore does not require a date. In the case of *Shakel v. Ranger*,<sup>b</sup> it was held, that where a party adds the *similiter* for his opponent, it need not be dated. In the second place, the irregularity, (if one) was waived by the party not objecting to it on a summons for a writ of trial. In *Mammott v. Muthew*,<sup>c</sup> a request by the defendant that the plaintiff would accept certain bail, was held to amount to a waiver of all irregularities in the affidavit of debt.

*Parker*, B.—The *similiter* in this case having been added by the party on his own behalf, certainly comes in the shape of a pleading, and therefore ought to bear a date. But the ques-

tion remains on the second point, as to whether this objection ought not to have been taken before the judge on the first summons. I do not, however, think that that omission amounts to a waiver of the irregularity. It is like the case of a summons to compute principal and interest on a bill of exchange, where it is not competent to shew for cause that no regular judgment has been signed: the proper course is, for the party to apply to set aside the judgment, if irregular. The practice in those cases is clearly settled to be, that you cannot attack the judgment itself. So here, on shewing cause on a summons for a writ of trial, the only question open for discussion is, whether there is likely to arise any difficult question of law or of fact, which would render a trial by an inferior judge improper under the circumstances.

Rule refused.—*Middleton v. Hughes*, H. T. 1840. Exch.

#### CHANGE OF VENUE.—HUSBAND AND WIFE.

*A party's wife is not a proper person to make an affidavit to change the venue, unless it appears that she has the management of the matter, although the husband is known to be ill.*

This was an application to change the venue, which had originally been laid in Cardiganshire.

*Halcomb* now moved that the venue in question might be changed to Monmouthshire. The affidavit on which he moved had been made by the defendant's wife, he being too ill to make one himself. The question was, whether such affidavit was receivable.

*Lord Adinger*, C. B.—We must not depart from the usual course, which is, that the affidavit in these cases, ought to be made by some person who is cognizant of the nature and circumstances of the action. An affidavit by the defendant or his attorney, would be the proper course, or even by the wife, if it could be shewn that he was so ill as to be unable to make one himself, and that she had the management of his affairs, and was thereby acquainted with the nature and particulars of the cause.

Rule refused.—*Williams v. Higgin*, H. T. 1840. Exchq.

#### JUDGMENT.—EXCUSE FOR NOT PROCEEDING TO TRIAL.

*It is not a good excuse for not proceeding to trial, that the client is in the country, but the attorney does not know where.*

This was a rule for judgment as in case of a nonsuit, for not proceeding to trial pursuant to notice.

*Peacock* shewed cause, and produced an affidavit made by the clerk of the London agent of the attorney for the plaintiff, and which stated "that he was informed, and believed that plaintiff had good cause of action, but that he was not then in a situation to go to trial; that the plaintiff was at present in the country, dependent did not know where, or when he would return."

*Lord Abinger*, C. B.—Although a slight ex-

<sup>a</sup> 2 Dowl. P. C. 304.      <sup>b</sup> 6 Ibid. 562.

<sup>c</sup> 2 Ibid. 797.

case is sufficient to induce the Courts to discharge a rule of this kind, on the plaintiff's giving a peremptory undertaking, still it is indispensably requisite that an excuse of some kind be given. This affidavit does not disclose any reason whatever for the plaintiff's not proceeding to trial hitherto, and therefore the rule must be made absolute.

Rule absolute.—*Mallan v. Jopson*, H. T. 1840. Exch

### SESSIONS, 1840.

#### House of Lords.

##### CAUSES APPOINTED FOR HEARING.

<i>Plowden v. Thorpe</i> ,	Exchequer, England
<i>Horne v. Pringle—Pringle v. Horne</i> , (second cross appeal)	Scotland
<i>Earl Belfast v. Marquis of Donegal</i> , (abated R.)	Chancery, Ireland
<i>Munro (or Ross) v. Paul</i> , (fully heard)	Scotland
<i>Wilson v. Tait</i> ,	(ditto) Scotland
<i>Mc Can v. O'Farrell</i> —Ex parte as to J. O'Farrell the elder, (abated by the death of Arthur O'Farrell)	Ireland
<i>Preston v. Viscount Melville</i> , (first appeal)	Scotland
<i>Preston v. Viscount Melville</i> , (second appeal)	Scotland
<i>Persse v. Persse</i> ,	Chancery, Ireland
<i>De Montmorency v. Devereux</i> ,	(ditto)
<i>Tenant and Co. v. Forth &amp; Clyde Canal Navigation Company</i> ,	Scotland
<i>Gibson v. Ross</i> ,	ditto
<i>Countess of Dalhouse v. Mc Dowall</i>	ditto
<i>Scanlan v. Usher</i> ,	Chancery, Ireland
<i>Reid v. Baxter</i> ,	Scotland
<i>Neilson v. Mrs. J. Donald</i> , (or Cochrane),	ditto
<i>Munro v. Muuro</i> ,	ditto
<i>Crawford v. Edward</i> (Pauper,) Ex parte,	ditto
<i>Hollier v. Eyre</i> ,	Chancery, Ireland

#### 1839—JUDGES.

<i>Sir Felix Booth, Bart. v. Governor and Company of Bank of England</i> ,	England
<i>Sir George Sinclair, Bart. v. Viscount Maitland</i> ,	Scotland
<i>Fergusson v. Fyffe</i> ,	ditto
<i>Creighton v. Rankin</i> , (first appeal)	ditto
<i>Creighton v. Rankin</i> , (second appeal)	ditto
<i>Irvine (or Douglas) v. Kirkpatrick</i> ,	Scotland
<i>Sir J. G. Craig, Bart. v. T. J. J. Cochrane</i> ,	Scotland
<i>Mac Lennan v. Grant</i> ,	ditto
<i>Haig v. Sir. W. T. Homan</i> , (et ad. ex parte as to certain respondents)	Chancery, Ireland
<i>Smyth v. Nangle</i> ,	ditto
<i>Earl Aldborough v. Trye</i> ,	ditto
<i>Andrewes v. Walton</i> ,	Chancery, England
<i>Jackson v. Jackson</i> ,	Chancery, Ireland
<i>Gordon v. Edinburgh Oil Gas Light Company</i> , (first appeal)	Scotland
<i>Laidlaw v. Smyth</i> , ex parte	ditto
<i>Viscount Maitland v. Horne</i> ,	ditto
<i>Braimer v. Bethune</i> ,	ditto
<i>Campbell v. Campbell</i> ,	ditto
<i>Gordon v. Edinburgh Oil Gas Light Company</i> , (second appeal), ex parte	Scotland

<i>Simpson v. O'Sullivan</i> , ex parte,	Chancery, Ireland
<i>Allan v. Mc Craw</i> ,	Scotland
<i>Hill v. Paul and another</i> , ex parte as to George Ord,	Scotland
<i>Commissioner of Police of Edinburgh v. Mitchell</i> , ex parte	ditto
<i>Muir v. Muir &amp; Co.</i> ex parte	ditto
<i>Walker v. Grant</i> ,	ditto
<i>Dixon v. Dixon</i> , (or Fisher,)	ditto
<i>Vigers v. Pike</i> ,	Chancery, Ireland
<i>Parr v. The Attorney General</i> ,	ditto
<i>Dixons v. Dixons</i> , (Pauper)	Scotland
<i>Carter v. Sir W. H. Palmer</i> , Bart.	Chancery, Ireland
<i>Stewart (or Menzies,) Pauper, v. Menzies</i>	Scotland
<i>Allan (or Dickson) v. Brander</i> ,	ditto
<i>Stewart v. Campbell (or Stewart,)</i>	ditto
<i>Cairns v. Anstruther</i> , ex parte	ditto
<i>Fraser A. T. F. v. Lord Lovat</i> ,	ditto
1840.	
<i>Callaghan v. Callaghan</i> ,	Chancery, Ireland
<i>Corrall v. Cattell</i> ,	Exchequer, Ireland
<i>Marquis Breadalbane v. Campbell</i> ,	Scotland
<i>Lawrence v. Blake</i> ,	Chancery, Ireland
<i>Sir Francis Burdett, Bart. v. Doe</i> , on demise of Spilsbury (Wr. Err.)	Q. B., England
<i>Skynner v. Doe</i> on demise of Spilsbury, (Wr. Err.)	Q. B. England
<i>Appeals not appointed for hearing and defending.</i>	
<i>Bryce v. Grahain</i> , abated,	Scotland
<i>Malcolm v. Messrs. Hotchkis &amp; Co.</i>	ditto
<i>Clyne v. Manson</i> , (abated)	ditto
<i>Mc Nair v. Lady Blantyre</i> , (abated)	ditto
<i>Wilson v. Sinclair</i> ,	ditto
1839.	
<i>Kerr v. Cochran</i> ,	ditto
<i>Lord Advocate of Scotland v. Lord Dunglas</i>	Scotland
<i>Lord Dunglas v. Duke of Argyle</i> ,	ditto
<i>O'Farrell v. Mc Can</i> (cross appeal)	Chancery, Ireland
<i>Cochrane v. Kerr</i> , (cross appeal)	Scotland
<i>Bremner v. Kerr</i> ,	ditto
<i>Horne v. Viscount Maitland</i> , (cross appeal)	Scotland
<i>Forbes (Pauper) v. Wilson</i> ,	ditto
<i>The Royal Bank of Scotland v. Christie</i> ,	ditto
<i>Sir L. St. George Skeffington, Bart. v. Budd</i> ,	Exchequer, England
<i>Bell v. Mylne</i> ,	Scotland
<i>Carrick v. Buchanan</i> ,	ditto
<i>Rutland v. Doe</i> on demise of Wythe (Wr. Err.)	England
<i>Campbell v. Boswall</i>	Scotland
<i>Scottish Union Insurance Company v. Marquis of Queensbury</i> ,	Scotland
<i>Skinner's Company v. Irish Society</i> ,	Chancery, England
<i>Campbell (Pauper) or Mc Lauren v. Fisher</i> ,	Scotland
<i>Sir John Simpson v. Lord Howden</i> , (Wr. Err.)	Queen's Bench, England
<i>Lord Lovat v. T. F. Fraser</i> , (cross appeal)	Scotland
<i>Sir James Dunlop, Bart. v. Cunningham</i> ,	ditto

1840.

Hamilton v. Hamilton, ditto  
 Sir John Kirkland v. Caddell, (1st appeal) ditto  
 Sir John Kirkland v. Caddell, (2d appeal) ditto

Renton v. Anstruther, Scotland  
 Marquis of Ormonde v. Wandesford, Chancery, Ireland  
 Scott v. Curle, Scotland

## CIRCUITS OF THE JUDGES.

SPRING CIRCUITS, 1840.	MIDLAND.	HOME.	NORFOLK.	OXFORD.	NORTHERN.	WESTERN.	N. WALES.	S. WAL'S
	Ld Denman. J. Bosanquet	Ld. Abinger. J. Littledale	B. Parke. B. Alderson	J. Patterson. B. Gurney	J. C. Jeridge. J. Erskine	J. Colman. B. Rolfe	J. Williams.	J. Maule.
Tues. Feb. 18	-	-	-	-	-	Appleby		
Thursday 20	-	-	-	-	Carlisle			
Saturday 22	-	-	-	Reading				
Monday 24	-	-	-	-	Newcastle & [town]			
Wednesday 26	-	-	Hertford	-	Oxford	Winchester		
Thursday 27	-	-	-	-	Durham			
Saturday 29	-	-	-	-	York & city	Salisbury		
Mon. March 2	Northamp-	Chelmsford	-	-	-	-	-	Swansea
Wednesday 4	-	[ton]	-	-	Worcester & [city]	-	-	
Thursday 5	-	-	-	-	-	-	-	
Friday 6	Oakham	-	-	-	-	-	Welchpool	
Saturday 7	Lincoln and	-	Aylesbury	-	-	-	-	Haverford-
Monday 9	-	[city]	Maidstone	-	-	-	-	[west & town]
Tuesday 10	-	-	-	Stafford	-	-	-	
Wednesday 11	-	-	-	-	-	Dorchester	Bala	
Thursday 12	Nottingham	-	Bedford	-	-	-	-	Cardigan
Saturday 14	[and town]	-	-	-	-	-	-	
Monday 16	-	Lewes	Huntingd'n	-	-	Exeter & [city]	Carnarvon	Carmarthen
Tuesday 17	Derby	-	-	Cambridge	Shrewsbury	-	-	* [ & bur. ]
Wednesday 18	-	-	-	-	-	-	-	
Thursday 19	-	-	-	-	Lancaster	-	-	
Friday 20	Leicester &	-	-	-	-	-	Beaumaris	
Saturday 21	[B.]	-	-	-	-	-	-	
Monday 23	-	Kingsb't	-	Hereford	Liverpool	-	-	Brecon
Tuesday 24	-	-	-	-	-	-	-	
Wednesday 25	Coventry &	-	-	-	-	-	Ruthin	Presteign
Thursday 26	[Warwick]	-	-	Bury St. Ed.	Monmouth	-	-	
Saturday 28	-	-	-	-	-	-	Mold	
Tuesday 31	-	-	-	Norwich &	Gloucester	-	-	
Wed. April 1	-	-	-	[city]	[& city]	-	Chester	
Thursday 2	-	-	-	-	-	Taunton	-	

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

## House of Lords.

Copyholds Enfranchisement. Ld. Brougham.  
 [In Select Committee.]

## PRIVATE BILLS.

No Petition will be received after the 6th March.

Nor Report of Judges thereon after 22nd May.

## House of Commons.

To amend the Law of Copyright.

[For second reading.] Mr. Serjt. Talfourd.  
 To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tennant.

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

Lord J. Russell.

To extend Freemen and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.

To amend Tithes Commutation Act.

[In Committee.] Sir. E. Knatchbull  
 Vagrants' Removal.

[For second reading.]

Small Debt Courts for

Aston, Liverpool,  
 Barkston Ash, &c. Tavistock,  
 Brighton, Newton Abbott,  
 Bolton, Wakefield Manor.  
 Marylebone.

Summary Conviction of Juvenile Offenders.

[For second reading.] Sir E. Wilmet.  
 To amend the County Constabulary Act.

Mr. F. Maule.  
 To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

## THE EDITOR'S LETTER BOX.

The letters on Attorneys' Certificates and Re-admission; the Non-payment of Country Agents; on the Examination of Articled Clerks; and on the Law of Wills, will appear at an early opportunity.

The letters of "Attornatus;" M. W.; H. B.; "Beta;" "Civis;" T. H.; C. M.; and I. S. T., are under consideration.

*Erratum*, p. 271.—In the case of *Podmore v. Laurence*, the rule was "made absolute" for a new trial, not discharged—as the judgment shews.

# The Legal Observer.

SATURDAY, FEBRUARY 22, 1840.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## SHARES IN JOINT - STOCK COMPANIES.

The law as to shares in joint-stock companies is still in so unsettled a state, and is yet, from the large capital embarked in them, so important, that we lose no opportunity in bringing before our readers every case connected with them as early as possible. We now invite their attention to two cases, very recently decided, which bear on this subject.

In the case of *Lorymer v. Smyth*,<sup>a</sup> Lord *Tenterden*, C. J., said, “the bargaining to deliver corn not then in possession of the vendor, and relying upon making a future purchase in time to fulfil his undertaking, was a mode of dealing not to be encouraged;” and in the case of *Bryan v. Lewis*,<sup>b</sup> the same learned Judge at *nisi prius* held, that where the agreement was that the goods should be delivered by a certain day, and the vendor, at the time of the contract, neither had the goods in his possession nor had any reasonable expectation of obtaining them by consignment, but intended to go into the market and buy them, this was a wagering and improper speculation, and the vendor could not maintain an action for nonperformance of the contract. But this case has been much shaken, and may now be considered entirely overruled. In the case of *Wells v. Porter*,<sup>c</sup> a plea to an action for work and labour, that the work was done by the plaintiff as a broker, in making time-bargains in foreign funds, was held bad on demurrer; and *Bosanquet*, J., there expressed his doubts as to the

soundness of Lord *Tenterden*’s opinion in *Bryan v. Lewis*, and this case of *Wells v. Porter* was confirmed by the subsequent decision of *Ebsworth v. Cole*.<sup>d</sup>

And in a very late case,<sup>e</sup> the rule laid down in *Bryan v. Lewis* has been disregarded. In this case the plaintiff contracted to sell to the defendant fifty shares of the Brighton Railway Company, to be transferred on the 1st of March, 1839, and the defendant pleaded in bar of the contract, that at the time of the agreement plaintiff was not possessed of the shares, nor had a reasonable expectation of becoming possessed thereof, otherwise than by purchasing the shares after the time of making the agreement. In the course of the argument Mr. Baron *Maule*, said, “that if Lord *Tenterden*’s doctrine was supported, it would render void all contracts to supply the army and navy, workhouses, and almost every public institution;” and Baron *Parke* delivered the following judgment:—

“I have also entertained considerable doubt and suspicion as to the correctness of Lord *Tenterden*’s doctrine in *Bryan v. Lewis*, Ry. & M. 386: it excited a good deal of surprise in my mind at the time; and when examined, I think it is untenable. I cannot see what principle of law is at all affected by a man’s being allowed to contract for the sale of goods, of which he has not possession at the time of the bargain, and has no reasonable expectation of receiving. Such a contract does not amount to a wager, inasmuch as both the contracting parties are not cognizant of the fact that the goods are not in the vendor’s possession; and even if it were a wager, it is not illegal, because

<sup>a</sup> 1 B. & C. 1; 2 D. & R. 23.

<sup>b</sup> 1 Ry. & M. 386.

<sup>c</sup> 2 Bing. 722; 12 L. O. 219.

<sup>d</sup> 2 Mee. & W. 31.

<sup>e</sup> *Hibblewhite v. McMorine*, 5 M. & W. 462.

it has no necessary tendency to injure third parties. The *dictum* of Lord Tenterden, certainly, was not a hasty observation thrown out by him, because it appears from the case of *Lorymer v. Smith*, 1 B. & C. 1 ; 2 D. and R. 23, that he had entertained and expressed similar notions four years before. He did not indeed, in that case, say that such a contract was void, but only that it was of a kind not to be encouraged; and the strong opinion he afterwards expressed appears to have gradually formed in his mind during the interval, and was no doubt confirmed by the effects of the unfortunate mercantile speculations throughout the country about that time. There is no indication in any of the books of such a doctrine having ever been promulgated from the Bench until the case of *Lorymer v. Smith*, in the year 1822 ; and there is no case which has been since decided on that authority. Not only, then, was the doubt expressed by *Bosanquet*, J., in *Wells v. Porter*, (2 Scott, 141 ; 2 Bing. N. C. 722,) well founded, but the doctrine is clearly contrary to law. This plea, therefore, is bad in substance, and it is unnecessary to consider whether it is bad in form."

In the other case<sup>1</sup> to which we would advert, by the terms of a Railway Act the directors were entitled to recover for calls in arrear, upon proving that the defendant was a proprietor, and that notice of the calls was given according to the act, unless the defendant should prove that he had paid the full amount of his subscription. Defendant having pleaded to an action for calls, that he was not indebted, and was not a proprietor, the Court refused to allow him to add pleas that due notice of the calls was not given ; that no time or place was appointed for payment ; that the calls were made for purposes other than those warranted by the act ; that they were made after deviations in the line, and that fewer shares were allotted than the act required. It will be observed that this decision turned a good deal on the construction of the particular act, especially as to the three first pleas ; but the following portion of the judgment of *Tindal*, C. J., appears to us of great importance, so far as the general question is concerned.

" The only possible ground on which the complaint can be urged by the defendant is, that the monies were applied in a way different from that directed by the statute. The act makes the call a debt due from the

<sup>1</sup> *London & Brighton Railway Company v. Wilson*, 6 Bing. N. C. 135.

subscriber to the company, and it limits the answer to be given to that claim of debt ;— if he has not paid the sum which is so called for, ' the company shall be entitled to recover what shall appear due on such call, unless it shall appear that the principal monies previously paid on any such share, together with such call, exceed the sum of 50l.' If we were to grant the pleas which are sought to be used as defences to the action, we should be repealing those directions of the 148th section of the statute, which enact that the money shall be recoverable upon certain proof being given to the plaintiff. This being a debt created by act of parliament, it is clear it was never intended that, in calling on a Court to decide whether a sum for the subscription is due or not, the parties should litigate matters which belong to another forum ; if the subscribers are dissatisfied with the mode in which the money is applied, the proper place and time to dispute that, is when a general meeting is called ;— they are there to express their disapprobation of the conduct of the directors. Or if the general meeting is at a great distance, and the question cannot be delayed, and there is a sufficient number of persons to dispute the propriety of the proceedings, they can call a special meeting by giving twenty-one days' notice thereof. It seems to me it was never intended, nor ought it to be allowed, that so general a question as that should be litigated in the question whether a call is due from an individual subscriber. The next plea on which it is contended the defendant has a right to rely, puts the last question in a more tangible and close compass ; for it states that there has been a deviation from the original line, and that the money is called for in respect of such deviation. The effect of allowing such an answer as this would be, that if there is any deviation to the extent of three yards, with the consent of the person whose lands immediately adjoins, and at the wish of the directors and of the company generally, every individual subscriber, from the moment that deviation is made, may stay his hand and refuse his call, and the whole concern be broken up altogether. Such a proposition cannot for a moment be sustained. The last plea which is sought to be placed on this record, is, that at the time the calls were made, there were not 36,000 shares in the company. Let us just see on what that stands. The 136th section of the act enacts ' that notwithstanding anything in the several subscription deeds or contracts relating to the

said several lines, the capital of the company hereby incorporated shall be 1,800,000*l.*, divided into 36,000.' I cannot see how it is possible to say there are not 36,000 shares: there may not be 36,000 called into action on which the subscriptions are sent in and the money forthcoming; but if there is the capital of 1,800,000*l.*, the act says it is divided, and there are the 36,000 shares, if not in fact, yet in contemplation of law. It seems to me, therefore, that it is not an available plea. All the pleas suggested seem to me rather calculated to raise difficulties than to put forward any just ground of defence."

### THE PRECEDENCE OF PRINCE ALBERT.

We have already endeavoured to state the law respecting the precedence of Prince Albert, (see *ante*, pp. 273, 274.) A pamphlet has been subsequently published, entitled "The Precedence Question," which mainly confirms the view we have taken, and adds some additional facts in support of them. The writer, (who is said to be a gentleman of considerable rank in the Privy Council,) after quoting the authorities we have already cited—pretty much in our own words,—*Blackstone*, *Lord Coke*, and *Selden*, comes to the conclusion that the 31 Hen. 8, c. 10, did not restrain the prerogative of the Crown as to precedence, except so far as the words of that statute extend.

"There exists what may be deemed very fair evidence, to show that in those days the royal prerogative as to precedence, was never supposed to be abridged by this act, but on the contrary that it still continued to flourish in undiminished force. Only two months afterwards Henry was divorced from Anne of Cleves, when, as is well known, he bribed her into compliance with his wishes, by a liberal grant of money and of honours. By his letters patent he declared her his adopted sister, and gave her precedence before all the ladies in England, next his queen and daughters, and therefore before his nieces and their children, who were directly in the succession to the Crown. (Burnet Refn. v. i, p. 565.) On the 3d November, 1547, Edward VI. granted to his uncle, the Duke of Somerset, immediately after his victory in Scotland, letters patent of precedence, in the following terms:

"As our most dear uncle Edward, Duke of Somerset, by the advice of the Lords, we have named . . . to be governor of our person and protector of our realm . . . during our minority, hath no such place appropriated

and appointed to him in our High Court of Parliament, as is convenient and necessary, as well as in proximity of blood unto us, being our uncle . . . as well as for the better maintaining and conducting of our affairs. We have, therefore, as well by the consent of our said uncle, as by the advice of other the Lords and the rest of the Privy Council, willed, ordained, and appointed, that our said uncle shall sit alone, and be placed at all times . . . in our said Court of Parliament, upon the bench or stole standing next our seat royal, in our Parliament Chamber. . . And further that he do enjoy all such other privileges, pre-eminent, &c. &c. *The statute concerning the placing of the Lords in the Parliament Chamber and other assemblies of council, made in the thirty-first year of our most dear father, of famous memory, King Henry VIII, notwithstanding.* (Rymer, 15; Collins' Peerage.)

"This instrument must, under the circumstances, be taken as the act of Somerset himself; and it is inconceivable that he should have had the audacity to attempt in his own behalf, that for which the plenitude of Henry VIII.'s power had been deemed insufficient, or to have perpetrated in the name of a minor king, a direct and useless violation of a recent statute,—more especially when the same object might have been as easily accomplished by the authority of Parliament, where the Protector's popularity would have ensured a ready compliance with his wishes. This view of the case receives confirmation from the total absence of any allusion to this grant in the charges which were soon afterwards urged against him—every thing that malice could devise was raked together for the purpose of swelling the articles of impeachment, but neither when he was degraded from the Protectorate, nor afterwards when he was deprived of life, was any accusation brought against him, tending to shew that these letters patent were considered illegal or unconstitutional."

And the writer goes on to consider the precise effect of the statute, and he points out incidentally the peculiar situation of Prince George of Cambridge.

"It may seem surprising or paradoxical to assert, and many may with difficulty believe, that Prince George of Cambridge is entitled to no precedence of his own, inseparable from his royal birth, but such, nevertheless, is undoubtedly the fact. By law, he can only take royal rank as the son, brother, uncle, or nephew, of the reigning Sovereign, none of which he is, and he derives none whatever from having been nephew of William IV. and George IV., and grandson of George III. The princes of the Blood Royal have, as to precedence, a moveable and not a fixed *status*, constantly shifting, with their greater or less propinquity to the actual sovereign; and in the event of Prince George's succession to his father's dukedom, he would only be entitled to a place in Parliament and in the Council, according to the antiquity of his peerage.

\* The Duchess of Suffolk, and the Countess of Cumberland, daughters of Charles Brandon and Mary, Queen Dowager of France.

"The practice, however, does not wait upon the right, and is regulated by the universal sense and feeling of the respect and deference which is due to the Blood Royal of England. The Archbishop of Canterbury does not take a legal opinion or pore over the 31st of Henry VIII. to discover whether he has a right to jostle for that precedence with the cousin, which he knows he is bound to concede to the uncle, of the Queen; but he yields it as a matter of course, and so uniform and unquestionable is the custom, that in all probability neither the prince nor the prelate are conscious that it is in the slightest degree at variance with the right.

"The obscurity which involves the question of precedence, and the prevailing doubts as to the extent of the royal prerogative, proceed, in a great measure, from the intermixture of law and custom, by which the practice is regulated and enforced. The table of precedence, the authority of which is recognised for all social and ceremonial purposes, rests upon statutory enactments, ancient usages, and the king's letters patent; usage creeping in to disarrange the order, and break the links of the chains forged by the law; for, while the 31st of Henry VIII. places earls after marquises, custom interposes and postpones the former to the eldest sons of dukes, (and so of marquis's eldest sons and viscounts,) though these are only commoners in the eye of the law. Now, as no custom (unless expressly saved), can prevail against the force of a statute, this renders it still more clear, that nothing was intended by the 31st Henry VIII. but "the placing the lords" in Parliament,<sup>b</sup> and that the question of general precedence, (with all the prerogatives of the Crown thereunto appertaining,) was left untouched by it.<sup>c</sup> In point of fact, the royal prerogative always has been, and still continually is exercised, in violation of the order of the established table; for when the king, by his royal warrant, gives to one of his subjects having neither rank nor dignity, the place and precedence of a duke's or an earl's son, the individual thus elevated supersedes all those (below that rank) whose place and precedence is determined either by law or custom.

<sup>b</sup> Lord Herbert, in his Life of Henry VIII., says, in allusion to this statute, "it was declared also how the lords in Parliament should be placed," p. 218.

<sup>c</sup> Lord Coke clearly distinguishes between precedence in Parliament and Council and general precedence:—"Thus far for avoiding contention about precedence in Parliament, Star Chamber, and all other assemblies, Council, &c. Now, they that desire to know the places and precedence of the nobility and subjects of the realm, as well men as women, and of their children, (which we have added the rather, for that the contention about precedence between persons of that sex is even fiery, furious, and sometimes fatal), we will refer you

"The result, then, appears to be, that in the olden time, the king had unlimited power in matters of honour and precedence, and could confer whatever dignity or pre-eminence he thought fit, upon any of his subjects. That this power has been expressly restrained, quoad the Parliament Chamber and the Council, but exists unfettered in all other respects.

"In Parliament, (should Prince Albert be created a peer), he would only be entitled to a seat at the bottom of the degree to which he might belong, and he would be expressly prohibited from sitting nearer to the throne. In the Privy Council, likewise, (if made a Privy Councillor) he would be entitled to no especial place, but every where else, at ceremonials of every description, at royal marriages, christenings or funerals, at banquets, processions, and courtly receptions, at installations and investitures, at all religious, civil, or military celebrations, upon all occasions, formal or social, public or private, the Queen may grant to her husband an indisputable precedence and pre-eminence over every other subject in the realm. It will probably be less difficult to obtain a concurrence of opinion as to the extent of the Queen's constitutional right in granting precedence, than as to the manner in which it would be morally fit, and just to others, that this right should be exercised."

. And he thus then the question "upon the broad principle of moral fitness."

"The principle on which precedence is established, is that of propinquity to the sovereign, and no propinquity can be so close as that of the husband to the wife, nor does it seem unreasonable that all other subjects should be required to yield the outward forms of honour and respect to the man who is elevated to a station so far above them, whom she is herself bound to "love, honour, serve, and obey," and who is superior to her in their natural, while still subordinate in their civil and political relations. Many people who are not unwilling to concede a high degree of precedence to the Prince, are very sensitive about the dignity of the heir apparent, and while they are content that he should precede his other children, would on no account allow him to be superior to a Prince of Wales. The difficulty in these cases is to establish a principle, but that difficulty is rendered much greater if when the principle is once admitted it is not taken with all its legitimate and necessary consequences. If the Prince is entitled to claim precedence over any of the Blood Royal of England, above all others, he may claim it upon every moral ground, over his own children, nor is there any civil or political consideration in reference to the heir apparent, requiring that an exception should be made in his behalf. There seem to exist confused notions, of something very extraordinary and transcendent in the *status* of a Prince of Wales, but the difference between him and his younger

to a record of great authority in the reign of Henry VII., entitled," &c.—4th Inst. 363.

brother is not very great, and the only positive privilege with which the law certainly and exclusively invests the heir apparent, is that of making it high treason to attempt his life.”<sup>d</sup>

The writer concludes with a very just compliment to the Duke of Wellington, which we have great pleasure in extracting.

“It is much to be regretted that such heat and irritation have been manifested in the discussion of this question, and certainly between the proceedings in both Houses of Parliament, Prince Albert may well have thought his reception neither cordial nor flattering; but the truth is, that any mortification which either the Prince or the Queen may have felt, (and in her it is only natural, whether just or not) is at least, as attributable to the really objectionable nature of the propositions which were made as to the opposition which they encountered.

“Nothing herein is more to be deplored, than that any mistaken zeal should misrepresent the conduct, or any hasty impression misconstrue the motives of the Duke of Wellington. His whole life has been a continual manifestation of loyalty and of superiority to petty purposes, and unworthy inducements; but his notions of loyalty are of a nature which mere courtiers are unable to comprehend, because he always considers the honour and the interests of the Crown, in preference to the personal inclination of the Sovereign.

“Of all men who ever lived he has sought the least, the popularity he has so largely acquired—the tide of which, sometimes diverted by transient causes, has always returned with accumulated force. With him it is no ‘echo of folly, and shadow of renown,’ but a deep, affecting, almost sublime national feeling, which exults in him as the living representative of national glory. If there be an exception in any place to this universal sentiment, let us hope that the impression will not endure, that the cloud of momentary error will be dispersed, and that justice, ample and not tardy, will be rendered to

“The noblest man  
That ever lived in the tide of time.”

## NEW BILLS IN PARLIAMENT.

### COSTS IN FRIVOLOUS ACTIONS.

This is a bill to repeal so much of an Act of the forty-third of Elizabeth, intituled “An Act to avoid trifling and frivolous suits at law in Her Majesty’s Courts at Westminster,” and of an act of the twenty-second and twenty-third of Charles the Second, intituled “An Act for laying Impositions on Proceedings at Law,” as relates to costs in personal actions; and to make further provisions in lieu thereof.

It recites that the 43 Eliz. c. 6, to avoid trifling and frivolous suits, and the 22 & 23 Car. c. 9, for laying impositions on proceed-

<sup>d</sup> It is also treason to kill certain judicial officers when in actual execution of their offices.—Hale, P. C. 13.

ings at law, which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said statute of Queen Elizabeth, but the same evil, notwithstanding, doth still prevail and increase; and that it is expedient to consolidate and extend those provisions: and proposes to enact that the two said recited acts of the forty-third of Elizabeth and of the twenty-second and twenty-third of Charles the Second, so far as the same relate to costs in personal actions, be hereby repealed.

2. That if the plaintiff in any action of trespass, either to the person or to real or personal property, or for libel, slander, or malicious prosecution, brought or to be brought in any of Her Majesty’s Courts at Westminster, shall recover by the verdict of a jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record (if the action be in trespass) that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought.

## ATTORNEYS’ CERTIFICATES.— NECESSITY OF RE-ADMISSION.

To the Editor of the Legal Observer.

Sir,

The doubtful state of the law upon a subject materially affecting the interests of the profession, induces me to address you, in order that public attention may, through the medium of your valuable journal, be called to the point. The question to which I refer is, whether the admission of an attorney becomes void by his neglecting to take out his certificate for one year from the date of such admission, or whether the certificate may be taken out at any time beyond such period, without a previous re-admission being required.

The rule acted upon hitherto in the Common Law Offices, and sanctioned by several decisions, amongst others those of *Ex parte Jones*, 2 Dowl. 451; and *Ex parte Marshall*, 6 Dowl. 526, was, that if no certificate had been taken out since admission, it might be taken out at any time, although more than a year had elapsed, and no re-admission would be required, but that if a certificate had been taken out within the year, and the party afterwards discontinued it for a twelvemonth, his admission became void, and he could not resume his practice without being re-admitted.

The construction seems to depend upon the words of the statute 37 Geo. 3, c. 90, s. 31, which, in dictating the terms of re-admission, directs that it may “upon payment of the arrears of duty accrued since the expiration of

*his last certificate,"* thereby excluding those cases in which no certificate has ever been taken out. This view of the case has, however, been materially shaken by the recent decision in *Wilton v. Chambers*, 7 Ad. & Ell. 524, & S.C. 2 Nev. and P. 392, in which indeed the precise point above referred to was not in question, but it was there decided that a neglect to take out a certificate for a year after *re-admission*, rendered such re-admission void, so as to involve the necessity of another re-admission before the party could be legally qualified to practice; and it may be inferred from various parts of the judgment that the Court would have come to the same conclusion in the case of an original admission.

It is unnecessary for me to dilate upon the inconvenience that must result from these conflicting decisions,—an inconvenience which is in future likely to be more severely felt than ever, it being now the practice with most young men to go up for examination and to get admitted as soon as their articles have expired, although in the majority of cases they have no immediate intention of taking out their certificates, or of entering into business; their sole object being to get over what is familiarly termed the "bother" of the examination.

If the inference I have drawn from the decision in *Wilton v. Chambers* be just, the effect of this decision will be to inflict a severe tax in the shape of certificate duty upon many who would otherwise defer this payment until they actually commenced practising: or, if they should decline submitting to this annual infliction, it will throw upon them the expence and delay of a *re-admission*, and possibly, also, under some future rule of Court, of a *re-examination*.

Under these circumstances, I submit that a declaratory rule, both prospective and retrospective, is imperatively called for upon this point, and which rule I apprehend the Judges have power to make under their general jurisdiction, independently of legislative enactment. In the mean time, Sir, I feel that I cannot leave the subject in better hands than your own, and I trust that by the insertion of the above hasty remarks you will bring the question to the notice of those who may be far more competent to pronounce an opinion or to suggest a remedy than

P. J. K.

#### ON THE STUDY OF MEDICAL JURISPRUDENCE.

As evidence of the assistance which medical science is capable of affording to the administration of justice, Dr. Brady in his introductory lecture in the Dublin Law Institute states the following remarkable examples:

\* A notice of the Dublin Law School or Institute has been some time in our printer's hands, but unavoidably delayed.

At Paris, in 1832, the body of a man was found in the Seine, cut into four parts. Being placed in the Morgue, the medical inspector remarked that at the different sections the skin and muscles were much contracted, as occurs when a part is divided during life; and on further examination he also found that the heart and blood-vessels were empty, and the system generally was drained dry. He was thence led to conjecture that the body must have been divided before life was extinct; and furthermore, from the appearance of the incisions, and the absence of other injuries, that the individual had been in a condition that disabled him from making any resistance. This induced him to pay particular attention to the stomach; and by a careful analysis, he detected prussic acid in its contents. A clue was thus afforded to the murderer, who was soon after discovered. Some of this poison was found in his room. He was convicted and executed—having confessed that he had first rendered his victim insensible with prussic acid, and then cut his throat, and immediately after cut up the body.

A body divided into two parts was taken out of the Loire. It was divided exactly through the cartilage, between the third and fourth lumbra vertebræ, and there were besides several wounds in the abdomen. From the manner in which the division was effected, the examiner, Dr. Ouvrad, concluded it had been done by some person accustomed to such an operation; and as the wounds in the belly proved the man had been murdered, he conjectured that the murderer was probably a butcher. This proved true. The criminal was discovered, convicted, and executed.

In 1823, a soldier named Bonino suddenly disappeared from a village near Montpellier, where he had for some time lived. Suspicion fell upon a paramour of his, and a man whom she subsequently married; but no investigation took place for three years after, when the magistrates having directed a search, a body was found in the garden of the suspected persons. After a careful examination of the remains of the body—all the soft parts of which, except the vertebral ligaments, were destroyed—Dr. Delmas was able to arrive at the following conclusions: that the individual had been a male, of the age of forty or upwards, and had six fingers on his right hand, and possibly a sixth toe on the left foot; (it was ascertained that Bonino had these peculiarities, and that he was forty six years of age); that he had been murdered by a blow of a blunt weapon, which fractured the left temporal bone; and that he had been buried in his clothes. The husband and wife were tried and convicted; and before their execution confessed they had committed the murder in the manner described by Dr. Delmas.

A still more extraordinary investigation was conducted by Orfila, Marc, Chevallier, and other distinguished medical jurists, in Paris, a few years since. So far back as 1821, a widow lady of the name of Houat, residing in Paris, had suddenly disappeared. Two men

and the wife of one of them were arrested on suspicion of having made away with her; but for want of evidence at the time, they were liberated. Eleven years after, a report reached the police of a body having been buried in a certain garden about that time. The body was found, and after a most skilful and able examination of its remains by the medical men, the following facts were satisfactorily established :

1st. That the skeleton was that of a female, sixty or seventy years of age, and nearly five feet in height.

2nd. That the hair, which was bright blond in youth, was mixed with gray at her death.

3rd. That the hands were small.

4th. That she died of strangulation, and that the act was to all appearance homicidal.

5th. That the body must have lain in the earth for several years.

The prisoners, who had been long suspected, were brought to trial twelve years after the murder, and convicted.

These are striking examples of the important aid the administration of justice may derive from medical skill and knowledge. They almost lead one to hope that science may one day realize the blind belief of the vulgar, and render it impossible murder can be hid. Less remarkable, but not less useful instances of the value of medical evidence are of every-day occurrence. The case of Bowerman, which was first reported in Paris and Fonblanque's work on "Medical Jurisprudence," and which you will find referred to by Mr. Phillips, and other writers on evidence, is a good illustration.

Three years after the death of a step-child of Bowerman, a report was set on foot that he had killed the child, by pushing an awl into its head, just behind the ear. The coroner was induced to have the body disinterred, and on examination, a small round hole was found in the skull, corresponding exactly with the account of the murder given by a witness. The coroner's jury returned a verdict of wilful murder against Bowerman, and at the next assizes of Exeter, a bill was sent to the grand jury against him. In the mean time, however, Mr. Sheldon, a surgeon in Exeter, having investigated the case, found that the hole in the skull was the natural opening for a blood-vessel, which was obvious, as well from the nature of its edges, as from a little channel which led to it; and having pointed this out, to the jury and produced before them a dozen skulls similarly perforated, the bill was ignored.

A few years since, an officer of excise was tried in Kent for shooting a man. The deceased had been, for some purpose or other, in company with a band of smugglers, and was retreating before the officer when he was shot. There was no doubt the officer had fired, but the smugglers, on their retreat, had also fired several shots; and a surgeon made it plain, from the direction and nature of the wound, that the ball must have entered in front, and therefore have come from the smugglers, and not from the prisoner.

Some years since, a Mr. Hodgson, a surgeon, was tried at Durham, for attempting to poison his wife, and the case affords an interesting illustration of the value of medical evidence. She had been ordered by a physician pills of calomel and opium for rheumatism; and it was pretty clearly proved that the prisoner, who kept a shop, and compounded the medicines himself, had substituted corrosive sublimate (a violent poison) for the calomel. When the wife began to suffer from the pills, the physician was sent for, and ordered a laudanum draught, which the prisoner himself immediately prepared; but the doctor, happening to observe that it was muddy, was induced to taste it, and recognised the peculiar acrid taste of corrosive sublimate. The prisoner, in his defence, alleged that he had mistaken for the water bottle an injection of corrosive sublimate he had prepared for a sailor. But by chemical analysis, it was ascertained that the injection contained five grains of corrosive sublimate to an ounce of water, while the draught for the wife contained fourteen grains.

In the last case which I intend to cite, medical knowledge was equally successful, in a somewhat similar way, in defeating a conspiracy to impute the crime of poisoning. A man of the name of Whally was tried at the assizes of York for administering arsenic to a woman who was pregnant by him. She swore that the prisoner, after twice trying to prevail on her to take drugs, for the purpose of procuring abortion, sent her a present of tarts, of which she ate one and a half, and in half an hour after was seized with symptoms of poisoning. Mr. Thackrab, an intelligent surgeon at Leeds, who was called to see her, found arsenic in the tarts that remained, and also in the matters vomited at different times; but he remarked that her appearance did not correspond with the complaints she made of suffering; her pulse and tongue were natural, and on careful investigation the following inconsistencies appeared:

1. She said she felt a coppery taste on eating the tart, a taste which arsenic certainly has not.

2. From the quantity of arsenic in the tarts that remained, she could not have taken above ten grains, while after repeated vomiting, the last matter vomited contained fifteen grains.

3. The time at which these fifteen grains were alleged to have been vomited, was not till two or three hours after the symptoms began; in which case, the symptoms would have been violent before that time.

The prisoner was acquitted, and the prosecutor and another woman, who had corroborated her testimony, subsequently confessed they had agreed to impute the crime to him, because he had deserted her.

## OBJECTIONS TO THE COPYHOLD ENFRANCHISEMENT BILL.

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[We have received the following observations on the Copyhold Enfranchisement Bill, and feel bound to insert them.]

The lords of manors, who, to say the least, are joint owners with the copyhold tenants, and were originally the sole owners, cannot be satisfied, in lieu of rights as ancient, and which ought to be as sacred, as any other description of property, with a miserable pittance doled out by arbitrary commissioners; and that pittance, in all instances of entailed manors, (which form the vast majority) not paid, but invested in the funds, at their present enormous height, producing there little more than three per cent. Thus exchanging their right upon the land, the best of all securities, for a fluctuating, precarious, and it may be, perishable investment. And all this to be effected by cumbrous and complicated machinery, the expense of which will in many cases swallow up the greater part of the money.

And where is the necessity for this sweeping and mischievous change? All the *real* evils of copyhold tenure may be removed by a short act, without injustice to any one, and at the same time preserving its manifold advantages, for such I can shew them to be.

I would say then, abolish the various anomalies of descent. Two lines will do this by saying that they shall all be assimilated to that of freehold tenure. Let *heriots* be commuted at the amount of average payments for the last three or five which have occurred—to be paid on all future occasions of death, &c.—for I presume it is not intended absolutely to rob the lord of his right. With regard to *timber*, as the law stands at present, I know practically, that in ninety-nine cases out of a hundred the lord commutes his right in timber felled for sale at a payment of one third of the produce; and it is settled without dispute or difficulty. Let the enactment declare this to be his right.

As to the *fines* on land, I know from extensive experience that there is no difficulty in assessing them, nor does it operate as a hardship on the copyholder (who buys the property at a price accordingly, it being known that he is only part owner) and I deny that it is any discouragement to agriculture; for throughout the country the copyhold land is farmed quite as well as the freehold, and I defy any one to distinguish the one from the other.

With regard to *buildings* to be erected on copyhold sites, it is not right that the lord should be deprived of all interest in prospective improvements, or of the increased value of land (which was originally his own absolute property) in particular situations. Let then the fine on new houses or buildings erected be assessed at the rate under the present law, namely, two years rent upon the improved value, but allow the half, or two thirds, or some other just proportion, to be defined, to

be retained by the copyholder against his expences of improvements, to be paid on the next admission after such improvements made; the value as rent to be fixed in the Manor Court, by a jury, appointed—one-half by the lord, and the other half by the copyholders—and the fine to be re-assessed upon the same principle on every future change of ownership.

These enactments would meet all the real evils and difficulties of the case.

But they talk of the *litigation* occasioned by copyhold tenure. Now, I venture positively to assert, from the peculiar simplicity of copyhold titles, and of the instruments by which they are conveyed—their publicity—the knowledge of the homage of the Court of the facts on which they rest—and their regular enrolment in the manorial books, accessible to all persons interested, and answering the much-desiderated purpose of a general registry, the litigation arising out of copyhold property (taking its relative quantity) is infinitely less than that arising either from freehold or leasehold tenures, and I appeal to the books of reports for the fact.

It is notorious too, that the expence of conveying copyhold seldom amounts to one half, or even one third, of that attending the transfer of the other species of property. P.

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## CLASSICAL AND MATHEMATICAL EXAMINATION OF ARTICLED CLERKS.

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*To the Editor of the Legal Observer.*

Sir,

BEING an articled clerk myself, you will easily perceive that my attention would be arrested by the communication (entitled "Preliminary Examination of Articled Clerks,") of your "Old Subscriber," contained in your Number for 25th Jan.; and as a course somewhat similar to that which he suggests for the legal, has already been adopted in the medical profession, shewing the willingness of our seniors generally to listen to such like proposals,—his communication seems to require that notice which it would not otherwise merit.

I entirely agree with your correspondent as to the desireableness of maintaining the "respectability" of attorneys; but I think the means which he suggests for securing it would be utterly inefficient. He proposes that each candidate for examination as an attorney should first be compelled to pass an examination in Virgil, Cæsar, and Xenophon, in which, of course, he is to shew his mastery of those works in the *original tongues*. Now I ask what connexion is there between an attorney's respectability in his profession, and his possessing a knowledge of a course of ancient books, written in dead languages, and utterly foreign to his profession? And if by "respectability" your correspondent means, not a "long purse," nor a new first-fashioned coat,

but that union of intelligence and integrity which merit respect,—I would ask whether the intelligence which an attorney ought to possess is to be found in Virgil and Cæsar, or in the scientific and commercial treatises which exhibit to him the present advanced state of the world?—or, if he require his moral nature training, is that to be effected by compelling him to dwell constantly, throughout his youth, upon the absurd, and often obscene, rites and impositions of a heathenish mythology, practised in times and amongst people in which the principles of morality and religion were scarce at all understood?—or is he to learn this requisite morality from the divinity and philosophy of modern Europe? Surely not from the former in either case. I therefore humbly think, that if respectability in an attorney be usually united with a knowledge of the "classics,"—which I am not by any means at present prepared to admit—the former is not, as your correspondent seems to think, a sequent result of the latter, but merely an accidental associate. Indeed, the truth of this is so obvious, on its suggestion to the mind, as almost to render unnecessary further comment. Your correspondent must, therefore, if he will have some preliminary examination to insure respectability, find out its veritable causes, and then proceed with his suggestions. In the mean time I shall proceed with my preparations for the present mode of examination *only*, with which, if rigidly carried out, I am perfectly satisfied.

Your "Old Subscriber" also recommends an examination in the two first books of *Euclid*, and in "a proportionate quantity of Algebra." To be sure these occasionally bear a little upon the actual duties of an attorney: they may be of use in the financial department of his profession: Yet the occasions of their usefulness are so "few and far between," and old Cocker is so much more serviceable, that on the ground of *utility* I think their claims are very small indeed. And as to their efficiency in producing the respectability required in an attorney, the remarks already made in reference to the "classics," apply also, in a great measure, to the "mathematics." Both are admirable as accomplishments; they may adorn moral principle (the great thing wanting), they may polish it; nay, they may assist in crowning it with the beauteous wreath of intellectual superiority, but they can never confer the principle itself.

One word more ere I conclude. As your correspondent seems to have so great a predilection for the "classics," and though styling himself old, still seems to retain the simplicity of his school-boy faith in their talismanic powers, he will perhaps, eulogise their excellencies, and grow eloquent in so doing; but I would ask him why an articled-clerk should be compelled to lose his time (of which, by the way, he is already short enough,) in becoming thoroughly conversant with disused languages, and books written in those languages, whilst all the excellencies which he seeks, and many more, may be found in his own tongue? What-

ever can be said in favor of those "classics" of Greece and Rome, may be repeated, with additions, in reference to the "classics" of Britain.

OMEGA.

## SELECTIONS FROM CORRESPONDENCE.

### LIMITATIONS TO THE SEPARATE USE OF A WOMAN.

(*Legal Observer*, vol. 19, p. 275.)

Sir,

WITH deference, I beg to suggest, that the conclusion you have come to upon the judgment of the *Lord Chancellor* in *Tullett v. Armstrong*, "that when the marriage takes place, the separate estate will become effectual, whether the clause against anticipation be inserted or not," is incorrect, and I find that in the passage quoted from the judgment by you in support of your conclusion, the very words which negative that conclusion are omitted; the judgment being: "After the most anxious consideration, I have come to the conclusion, that the jurisdiction which this Court has assumed in similar cases, justifies it in extending it to the protection of the separate estate, with its qualifications and restrictions attached to it, throughout the subsequent coverture." See 19 L. O. p. 268.

H. B.

[We quite agree with our correspondent, and are obliged to him for his correction. We intended to have said "whether the clause against alienation be inserted or not," i. e. the gift over in that event to some other person. In the case of *Tullett v. Armstrong*, ante, p. 264, it will be seen that "the second gift under the first will was not accompanied with the restraint on alienation," although in other gifts by the same testator there was this restraint; and the *Lord Chancellor* held that this made no difference, but that "if separate estate was to be supported, it must be supported on both branches. I do not see how the *Vice Chancellor's* view can be supported," alluding to the decision to the contrary in *Newton v. Reid*, 5 Sim. 663. The clause against *anticipation* is still a stringent and operative clause. ED.]

### ADJOURNED COURT OF THE LATE SPECIAL COMMISSION.

To the Editor of the *Legal Observer*.

Sir,

HAVING observed, by a constant perusal of your Journal, that its pages are always open, within reasonable limits, to the discussion of legal subjects, I beg to call your readers' attention to an important point of law arising from the late trials for high treason at Monmouth.

A Special Commission was appointed to try the parties implicated in the recent disturbances at Monmouth. The Judges named in the Commission were Chief Justice *Tindal*, Mr. Baron *Parke*, and Mr. Justice *Williams*. The Court opened and commenced their sittings in the usual manner, and after the prisoners had pleaded to the indictment, an objection was taken by their counsel that the direction of the statute 7 Anne, c. 21, s. 11, had not been complied with, and the Court, considering the objection entitled to consideration, it was agreed that the trial should proceed without prejudice to the question as to the validity of the objection; and the Chief Justice stated that the Court, at the conclusion of the trials, would adjourn to a future day at Westminster Hall, and request the assistance of the other learned Judges; and that the prisoners would be entitled to the same benefit of the objection, as if the Court was sitting at Monmouth; and on this understanding the trials proceeded, and ultimately the leaders of the riots were found guilty.

Chief Justice *Tindal*, Mr. B. *Parke*, and Mr. J. *Williams*, accordingly assembled in the Court of Exchequer Chamber, requesting the assistance of the other twelve learned Judges, (the question being of great importance to the parties concerned) to consider the point raised by the prisoner's counsel at the trial. Now Sir, I submit the Court was an adjourned Court from Monmouth, and not an Exchequer Chamber Court; and those three Judges who presided at Monmouth, legally constituted such adjourned Court, and not the whole fifteen Judges. The fifteen Judges were only requested to advise, and not to decide. Without entering into the merits of the objection, it will be sufficient for the present purpose to observe that the point was argued with great ability by the counsel on behalf of the Crown, and the prisoners; and it was held by a majority of the presiding Judges at Monmouth—and, as I contend, a majority of the constituted Court, *viz.* Mr. B. *Parke* and Mr. *Williams*—that the objection was valid; and a majority of the Judges who lent their assistance, were of the same opinion. Chief Justice *Tindal*, and the minority of the Judges who assisted the adjourned Court, were of a different opinion.

Another point was raised, whether the objection was taken at the proper time to entitle the prisoners to the benefit of an acquittal consequent on the objection being decided in their favour. Mr. B. *Parke* and Mr. J. *Williams*, held that the objection was taken at the right season, and on the above principle, the majority of the Court, as constituted at Monmouth by the Special Commission, and adjourned to Westminster, were in favour of the prisoners. A minority of the Judges who assisted, also thought the objection was taken in time. Chief Justice *Tindal* was of different opinion, and a majority of the Judges who attended to give their assistance to the adjourned Court, coincided with C. J. *Tindal*. The result therefore, is, that the majority of

the Judges who legally constituted the Court at Monmouth, and, as I contend, also constituted the adjourned Court held at the Exchequer Chamber, were of opinion that the objection was valid; and also, that such was taken in due time to entitle the prisoners to the benefit of it, and a majority of the Judges who attended for the express purpose of "assisting" the Court, were of the same opinion, but however, they thought the point was not raised at the proper season.

I think, Sir, no question can arise as to whether it was an adjourned Court, constituted by the same Judges who presided at Monmouth, or a Court of the Exchequer Chamber, constituted by the whole fifteen Judges; because C. J. *Tindal* distinctly stated that the Court was not an Exchequer Chamber Court, but only an adjourned Court from Monmouth, and was exactly the same as if they were sitting there, but in consequence of the importance of the point to be decided, they had thought proper to request the advice and assistance of their learned brethren. If it had been an Exchequer Chamber Court, I think no question could arise, but that the whole fifteen Judges constituted such Court, and the opinion of the majority of them would be the judgment of the Court; but, considering it as an adjourned Court from Monmouth (and I apprehend that no doubt can arise as to that point after the observations that fell from C. J. *Tindal*), I am of opinion that the decision of the majority of the Court, so constituted by the Special Commission at Monmouth as aforesaid, and so adjourned from thence to Westminster, to consider the objection taken at the trial, was the judgment and final decision of such Court; and I think the Judges assisting the presiding Judges, had no power to interfere with the final decision, but only to lend their assistance to enable the adjourned Court to arrive at a conclusion warranted by the law, and the Court was not bound to acquiesce in the opinions pronounced by them, or the majority of them, lending their assistance. Suppose the objection had been decided at Monmouth as it has been at Westminster, by the majority of the Judges who constituted the Court there, would not the prisoners be entitled to an acquittal on the question being decided in the affirmative? Most assuredly they would; and I contend that by adjourning the Court from Monmouth to Westminster, it could not alter in anywise the constitution and power of such Court.

W. J.

### THE STUDENT'S CORNER.

To the Editor of *The Legal Observer*.

Sir,

A conveys to B. for a valuable consideration. The draft is, by mistake, drawn "to and to the use of C. in trust for B." the purchaser. After which follows an assignment from D. to C. of an outstanding term in order to merge.

The engrossment is subsequently altered, and the conveyance executed "to C. to the use of B." But the assignment of the term remains. Now the question is, whether C. has a sufficient estate to merge the term, so that the whole may pass under the limitation of use to B. The line of argument taken in favour of this proposition is, that the assignment of the term being contained in the same deed with the conveyance to uses, C. though a simple conduit pipe, takes under the conveyance an estate, (though only for a moment) sufficient for the purpose of merging the term. But, I rather incline to think myself that such is not the case, but that the legal estate in the term remains in C.; and the more so, by analogy to the case of an estate passing into a person, and out of him again immediately, under a fine or recovery, where it was held (under the old law), that the cognizee or recoveror did not take an estate sufficient to cause any alteration in the course of descent. In support too, of my view of the question, may be quoted, the express saying in the statute of uses in favour of termers for years.

AN ARTICLED CLERK.

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#### LIEN ON CATTLE.

Sir.

KNOWING your kind attention to the youthful members of the legal profession, I feel confident you will permit me to obtain through the medium of your publication a replication to the question: Has an agister a lien upon the cattle for the amount of his hire or compensation?

On examining the authorities I have found nothing exactly in point. Judging, however, from the cases of *Blake v. Nicholas*, 3 M. & S. 167; *Chase v. Westmore*, 5 M. & S. 180; *Ex parte Deese*, 1 Atk. 258; *Rushford v. Headfield*, 6 East R. 519; 7 East R. 224; *Scarf v. Morgan*, 4 Mees. & W. 270; and many others that I will not now name; I should certainly incline to think he has. The rule, as gathered from the cases, appears to be that every bailee of work is entitled to a lien upon the article for the amount of his charges in respect to it. If then it be proved, as it clearly can, that a delivery of cattle to an agister to depasture is a bailment, and a bailment belonging to that species entitled *locatum*, and to that branch of it more particularly denominated *locatio operis*, our question is answered; for it necessarily follows that the agister is a bailee of work, and consequently subject to the operation of the rule. The generality of the rule would, however, at first sight appear to be somewhat impeached by the decisions of *Chapman v. Allen*, Cro. Jac. 27, and *Hoastler's Case*, Yel. 76; wherein it is adjudged, that if an innkeeper receive horses, or cattle to pasturage upon an agreement for the payment of a weekly sum, he has no lien; and also that if an innkeeper agree with his guest for a fixed sum per day for the keep of his horse, the innkeeper has not a lien for the expences. But these cases, I should apprehend,

depend for their distinction, from those quoted already upon the fact that in them a specific sum and a specific mode of payment is stipulated for, and consequently a special agreement set up discordant with the continuance of the lien. Lord *Ellenborough* himself, in *Chase v. Westmore*, admitting that the mode and time of payment being agreed upon between the parties, is sufficient to take any case out of the general rule, since the workman would not be entitled to set up a right inconsistent with his express agreement. If this be the principle of the decisions, there is nothing conflicting between them and the cases establishing the above mentioned rule, being strictly in accordance with the maxim *cessante ratione legis, cessat ipsa lex*. This is the result of my enquiry into this interesting portion of our law. If the cases I have quoted be irrelevant, the rule I have laid down imperfect, or the reason for the adverse decisions erroneous, I have no doubt that amongst your numerous correspondents there will be one, who by your permission, will oblige me by proving to me my error, and thus at the same time furnish me with an answer to the enquiry with which I have set out—Can an agister detain the cattle that are bailed to him for the amount of his demand?

C. C. C.

#### NOTES OF THE VACATION.

##### CHANCERY REFORM.

The discussion of this subject arouses new laborers in the field of useful reform. Mr. Edwin Field has just published an excellent pamphlet, which we shall notice next week. It is full of important matter, and comprises, we think, a powerful, but fair statement of the defects in the Chancery Offices, the Practice, and the system of taxing costs.

##### REMOVAL OF THE COURTS FROM WESTMINSTER.

A very able pamphlet has just been published, called "Westminster Hall Courts," containing an important collection of "facts for the consideration of parliament, before the final adoption of a plan perpetuating the courts of law on a site *injurious and costly to the suitor*." This subject has been often noticed in these pages, and we shall gladly lend our aid in effecting a change, which would be clearly beneficial both to the public and the profession at large.

##### NEW QUEEN'S COUNSEL AND SERJEANTS.

Mr. Turner and Mr. Bethell, of the Chancery Bar, have been created Queen's Counsel; and Mr. Manning, Mr. Channell, Mr. Shee, and Mr. Halcomb, Serjeants.

## SUPERIOR COURTS.

## Vice Chancellor's Court.

PLEADING — DEMURRER — SOLICITORS.—  
DIOCESAN PROBATE.

*A bill, filed for rectifying a deed, charged solicitors with fraud in preparing it, and prayed costs against them: Held, that they were properly made parties, although they had no interest in the subject, and might be witnesses for other defendants.*

*A prerogative probate or administration is not necessary to enable a person to sue in equity as the representative of a testator or intestate, if he has the proper diocesan probate or administration.*

This was a bill to rectify a deed, the draft of which, as settled by counsel, had been sent to the solicitors of a defendant in a former suit (which was intended to be put an end to by the deed) to be engrossed by them. The bill charged the solicitors, who were defendants to it, with having, without plaintiff's knowledge, introduced into the deed a passage that was not in the draft, and it prayed costs against them. They demurred to the bill for want of equity, as they had no interest in the subject-matter of the suit, having been only solicitors for one of the defendants, for whom also they might be examined as witnesses. Another demurrer was put in to the bill for want of parties. The original suit related to the administration of the estate of an intestate named Knightley Adams, to whom a prerogative administration had been taken out. Mrs. Robinson, one of his next of kin, dying, after executing the deed compromising that suit, her husband took out letters of administration to her in the diocesan Court of Peterborough, within which jurisdiction she had lived, and she was a plaintiff in this second suit. The ground of the second demurrer was, that Mrs. Robinson was not duly represented, and that a prerogative administration was necessary to constitute Mr. Robinson her proper legal representative.

Mr. Wakefield and Mr. Koe for both demurrs.

Mr. Knight Bruce, Mr. Girdlestone, and Mr. Foster, in support of the bill.

The points of the arguments may be collected from the judgment.

The Vice Chancellor having taken time to consider the case, said, in giving his judgment, that he had read the bill, and was of opinion such a case was stated as required an answer. It appeared to him, as to the first demurrer, that there could be no doubt of the propriety of filing such a bill, if what was stated by Lord Redesdale in his book on pleading was correct. "Where bills have been filed to impeach deeds on the ground of fraud, attorneys who have prepared the deeds, and other persons concerned in obtaining them, have been frequently made defendants, as parties to the fraud com-

plained of, for the purpose of obtaining a full discovery: and no case appears in the books of a demurrer by such a party, because he had no claim of interest in the matter in question by the bill." That was stated by Lord Redesdale without giving any authority. Then he went on: "Indeed, an attorney under such circumstances, being brought as a party to the suit to a hearing, has been ordered to pay costs."<sup>a</sup> For this Lord Redesdale did give authority. His Honor said he could not suppose that a person of Lord Redesdale's experience would have declared in his book that attorneys had been made parties to such bills, if there could be any doubt such had been the case. In the case of *Le Texier v. The Margravine of Anspach*, the opinion of Lord Eldon was thus expressed;<sup>b</sup> "Where an attorney or other agent is so involved in the fraud charged by the bill, that, though a reconveyance or other relief cannot be prayed against him, a Court of Equity will, rather than that the plaintiff shall not have his costs, order that agent to pay them; if he is made a party, the plaintiff must pray that he may pay the costs, otherwise a demurrer will lie." It was clear from this passage Lord Eldon took it for granted the practice was as Lord Redesdale had laid it down. In *Bowles v. Stewart*,<sup>c</sup> Lord Redesdale himself acted on what he stated in his book, for there he said, "as to Mr. Bowles's solicitor, he was acting for his client, but his duty as a solicitor did not bind him to assist his client in an act of injustice, &c. His zeal for his client has led him too far; he has properly been made a party. He was an acting party in the transaction, and properly brought to a hearing, and ought to be chargeable with the costs, so far as they relate to the release, in case they cannot be recovered from Richard Bowles." Here was a judicial recognition of the doctrine stated by Lord Redesdale. His Honor wished it to be understood that he was proceeding upon the footing of the statements contained in the bill; and that Messrs. A. B. would not suppose he had the least suspicion of the purity of their intentions in acting as they had done. He had known them too long to suppose they would be guilty of any impropriety of conduct. But from what was stated in the bill, he thought they had been properly made parties, and that what was prayed against them was properly prayed.

The point stated by the second demurrer was more important. It appeared to his Honor a strong proposition that, in no case, was a person, who had obtained a diocesan probate or administration, capable of being a plaintiff in equity. He always thought it was a rule that such a party could bring what action he chose; and if he could bring any action, of course equity, which followed the law, would permit him to file a bill. There were several cases which clearly proved that a diocesan administrator could support an action at law.

<sup>a</sup> Mitf. Pleadgs. 189, 4th ed.

<sup>b</sup> 15 Ves. 164.

<sup>c</sup> 1 Sch. & Lef. 227.

If, in the present case, it appeared on the face of the pleadings that there could not properly have been an administration from the Court of Peterborough, it would have been a ground of demurrer; but the case stood differently. Knightly Adams died intestate, and, after some contest, prerogative administration was granted to Sarah Cole (afterwards Mrs. Robinson), who was one of his next of kin, and had a right to sue for her portion of the clear residue, after all the property had been turned into money, and the debts and funeral expenses of the intestate satisfied. It was of very little importance to state whether the first intestate was possessed of property in different dioceses, as the right of the next of kin was not to the specific property, but to a share of the clear surplus which would be produced by it after payment of all the demands upon it. There was nothing on the face of the bill to shew that Sarah Cole was not residing in the diocese of Peterborough; or that she had *bona notabilia* out of that diocese; and his opinion on that part of the bill was, that it might very well stand that the diocesan administration granted to Mr. Robinson as administrator to Sarah Cole or Robinson, his wife, was properly granted. Then this demurrer also was bad, and must be overruled, with costs.

*Beadles v. Burch and others*, at Westminster, November 27th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### PLEADING.—DEBT.—BILL OF EXCHANGE.—PROMISSORY NOTE.

*Debt will lie by the payee of a promissory note against the maker, and by the drawer of a bill of exchange against the acceptor, without the words "value received" being contained in the instrument.*

This was an action of debt by the payee against the maker of a promissory note, which did not state that it was given for value received. The defendant demurred to the declaration, and the question raised on the demurrer was, whether debt was maintainable under such circumstances.

**Mr. Watson**, in support of the demurrer.—*Debt will not lie in such a case. There are various instances of this given in Comyn's Digest.<sup>a</sup> A promissory note or a bill of exchange is not necessarily given in payment of an existing debt; each is often given for the accommodation of a particular party, and often for collateral engagements, to meet some demand which is not a debt. It is only where the instrument is given for a positive debt, acknowledged upon the face of it, that such an action as the present can be maintained, and even then it must be between the immediate parties, *Priddy v. Hendry*.<sup>b</sup> That a promissory note does not constitute a debt is shewn by *Kesddy v. Price*,<sup>c</sup> where it was held that an ac-*

*tion of debt would not lie on a promissory note, payable by instalments, until the last day of payment was past. In *Randle v. Rigbyd* it was held that a defendant could not be sued in debt to pay a sum of money unless such sum was charged upon land, which shews that where a covenant is collateral, debt will not lie. In *Cresswell v. Crisp* the Court would not set aside, as frivolous, a demurrer to a declaration in which the ground of demurrer was, that in debt on a promissory note it did not appear that the words "value received" were in the note, and the same rule was acted on in *Lyons v. Cohen*.<sup>d</sup> [Mr. Justice Littledale.—In Comyn's Digest it is said that debt will lie in the city of London] which shews that it will not lie elsewhere. [Mr. Justice Coleridge mentioned *Compton v. Taylor*.<sup>e</sup>] That case only shews that where a promise is spoken of, it does not necessarily mean a promise in the shape of an assumpsit. The same principle had long ago been recognised in a case in *Strange*.<sup>f</sup> [Mr. Justice Coleridge.—Under the new rules the same forms are applicable both to debt and assumpsit. If that is so, it is difficult to say that debt will not lie.] The same words are to some extent used in both forms, but the two actions differ widely from each other.*

**Mr. Butt, contrd.**—This is a good count in debt upon a general demurrer. It is not now necessary in any case to insert the words "value received" in a bill of exchange, either in assumpsit or in debt. It was formerly thought necessary, but it is now settled to be otherwise. *Stratton v. Hill*<sup>g</sup> was an action by the first indorsee against the first indorser of a bill, and the contract there was consequently a contract to pay if the acceptor did not. A direct privity was held to exist there. A covenant and a promise to pay both import consideration. In *Rumball v. Bell*<sup>h</sup> an action of debt was brought upon a note. The words there were, "I acknowledge myself indebted to" such a one. [Mr. Justice Littledale.—Those words necessarily import consideration. There is nothing in the words "value received" to shew that there was a consideration moving between the two parties, but even if there were, no such words are used in the present instrument. *Hatch v. Traves*.

**Mr. Brumwell** appeared in support of the demurrer in another case, which depended on exactly the same point as the last. The instrument here was a bill of exchange, and the action was by the drawer against the acceptor. *Compton v. Taylor*,<sup>i</sup> decided in the Court of Exchequer, determined two points. That may be collected from the report, though not apparent in the judgment of the Court. The marginal note there is incorrect. The first

<sup>a</sup> 4 Mee. & Wels. 130. <sup>e</sup> 2 Dowl. P. C. 635.

<sup>b</sup> 3 Dowl. P. C. 243. <sup>g</sup> 4 Mee. & Wels. 138.

<sup>c</sup> *Welsh v. Craig*, 1 Str. 680.

<sup>d</sup> 3 Price, 253.

<sup>j</sup> Com. Dig. Debt, pl. 1. Bayley on Bills, 4 Ed. p. 40.

<sup>k</sup> 10 Mod. 38. <sup>l</sup> 4 Mee. & Wels. 138.

<sup>a</sup> Com. Dig. Debt, A. and B.

<sup>b</sup> 1 Barn. & Cres. 674. <sup>c</sup> 1 Hen. Bl. 547.

point was, that the word "promised" does not prevent a count from being a count in debt. That may be collected from the arguments, the cases cited, and the judgments. The other was that the demurrer to the whole declaration, was too large; and had, even on the assumption that debt would not lie on the bills in question. Then that case does not bear on the present. But if it decided that on the authority of the rule T. T. Wm. 4, debt would lie now, where it would not before those rules, then it was decided on an untenable ground. For it was clear, that when those rules were made, the judges had no power to alter the law that had been admitted by the courts. [Mr. Justice Coleridge assented.] Moreover, those rules contemplated a difference in form, by merely providing that the counts should be of the same length. There are many authorities in Comyn's Digest<sup>m</sup> to shew debt will not lie in this case. It has been supposed that the general proposition there laid down, that debt would not lie on a bill, could not be relied on as law, having been at least qualified by subsequent cases. But in those cases of *Priddy v. Henry*,<sup>n</sup> and *Bishop v. Young*,<sup>o</sup> the judges not only did not dissent from the older authorities, but quoted them, and founded their judgments on them. The authorities therefore are not in conflict, but amount to this, that debt will not lie on a bill of exchange, but will for the consideration apparent on the face of it. Here that is not the case, for there is no consideration on the face of the instrument, there being nothing but a bare promise to pay. *Hatton v. Keightley*.

*Cur. adv. rul.*

**Lord Denman.**—On the first day of the *Sittings in Banco* after Term, delivered judgment.—We have considered these cases, and think that an action of debt may be maintained between the immediate parties to a bill of exchange or a promissory note,—even if the words "value received," are not found upon the instrument. And, in coming to this decision, we are happy to follow the authority of the Court of Exchequer, which we consider to have determined this question.

Judgment for the plaintiff in each case.—H. T. 1840. Q. B. F. J.

#### Queen's Bench Practice Court.

**CHANGE OF VENUE.—PENAL ACTION.—PRE-JUDICE.**

*The Court will not change the venue in an action for penalties for election bribery, on the ground that the election took place in a borough, and that the brother of the successful candidate is Lord Lieutenant of the county, and the undersheriff the agent of the brother.*

*Cockburn*, on the part of the plaintiff, moved for a rule to shew cause why the venue in this

<sup>m</sup> Com. Dig. Action on Assumpsit, a. 2. Merchant, f. 12—14. Debt, b.

<sup>n</sup> 1 Barn. & Cres. 674. <sup>o</sup> 2 Bos. & Pul. 78.

case should not be removed from Salop to Middlesex. It was an action brought by the plaintiff against the defendant to recover penalties for bribery alleged to have been committed at the election for the borough of Ludlow. The plaintiff originally laid his venue in the county in which the offence was committed, pursuant to the provisions of 21 James I. The present application was founded on an affidavit of the attorney for the plaintiff, which stated that the Hon. Mr. Clive was a candidate at the late election for the borough of Ludlow; that his brother, Lord Clive, the head of the family, was the lord lieutenant of the county, and his agent was the undersheriff, and who, consequently, had the summoning of jurors; and that there could not, such was the family interest of the Clives, be a fair trial within the county. In support of the application, he cited the judgment of Lord Mansfield in *Petyt v. Berkeley*.<sup>p</sup> That was an action of slander, brought by a Gloucestershire justice of the peace, for words spoken by the defendant, Mr. Berkeley, upon the hustings, at the time of an election of a member for the county of Gloucester—Mr. Berkeley himself being then one of the candidates. In arguing the question at the bar, Mr. Serjt. Wilson had contended, that the whole county of Gloucester was so agitated on the one side or the other, that it was impossible, at least highly improbable, a jury of that county would try the cause impartially and without prejudice; and in considering this part of the argument, Lord Mansfield said, "it was a very strong ground why the venue should be changed in this case. In all cases, one would wish not only a fair, but an unsuspected trial: Here, the very nature of the action, the event which gave rise to it, and the circumstances of the parties, shew there cannot be a satisfactory trial."

**Patteson, J.**—Why did the plaintiff lay his venue in Salop?

**Cockburn.**—He had no option by the statute 21 James I, c. 4.

**Patteson, J.**—The case of *Petyt v. Berkeley* is distinguishable from the present case, that the matter was in reference to a county, whereas here it refers to a borough; and I cannot say, that amongst all the freeholders of a very large county, the plaintiff would not have a fair trial; for it does not appear to me likely that all the freeholders in Shropshire are so engaged in the Ludlow election that they could not decide impartially at the trial.

**Rule refused.**—*Hall v. Coleman*, H. T. 1840. Q. B. P. C.

#### Common Pleas.

**BANKRUPT.—ACT OF BANKRUPTCY.—FRAUDULENT TRANSFER OF PROPERTY.**

*A fraudulent sale of goods by a trader, through the agency of one of his creditors, the purchasers being unaware of the fraud, does not constitute an act of bankruptcy*

<sup>p</sup> C.omp. 510.

*under 6 G. 4, c. 16, s. 3, although the proceeds of the sale were to be applied in liquidation of the creditor's debt.*

*Bompas*, Serjt., shewed cause against a rule obtained by *Crowder* for a new trial, on the ground of misdirection of the learned judge. It was an action of trover for grocery goods, brought by the assignees of a bankrupt. The declaration contained eight counts, to which the defendant pleaded amongst other pleas, that the plaintiff was not possessed as assignee. The cause was tried before *Maule*, B., at the Somersetshire Spring Assizes, and it appeared that the defendant, who was a traveller, had formerly been a partner with *Creed*, the bankrupt, who was a grocer at Bridgewater, and that *Creed*, being in insolvent circumstances, and both he and the defendant being aware of that fact, and *Creed* being also indebted to the defendant in 200*l.*, it was arranged between them, that the defendant should procure purchasers for the goods in question at various towns, the sale to be effected under prime cost, the real name of the vendor being concealed. Accordingly, the defendant effected various sales to different purchasers, to each of whom the goods were subsequently delivered, the goods remaining until such delivery in the possession of *Creed*; but it did not appear that in any instance the purchaser was privy to the fraudulent arrangement between the bankrupt and the defendant. The learned judge told the jury, that unless the purchaser of any of the goods in question, was a party to the fraud, none of the sales constituted an act of bankruptcy; and the jury having found that in no instance the purchaser was a party to the fraud, a verdict was found for the defendant.

*Bompas*, Serjt. shewed cause, and cited *Baxter v. Pritchard*.<sup>a</sup>

*Erie* and *Bull* supported the rule, and contended, that assuming the ultimate purchaser in every instance was ignorant of the fraud, still the arrangement between the defendant and *Creed* amounted to a transfer of goods to the defendant within 6 G. 4, c. 16, s. 3, and was therefore an act of bankruptcy. The action is not brought against the purchaser, who might have acted *bond fide*, and is therefore not sought to be fixed with the loss. It is not disputed that the defendant was a party to, and indeed, the main actor in, the fraud. The debt owing to the defendant was to be satisfied out of the proceeds of the goods; it was therefore a delivery for his benefit in each case. But, secondly, in order to constitute an act of bankruptcy by a fraudulent sale, it is not in all cases necessary to prove a guilty knowledge on the part of the buyer. *Cumming v. Bailey*,<sup>b</sup> *Bearan v. Nunn*,<sup>c</sup> *Pearson v. Graham*.<sup>c</sup>

*Cur. adv. vult.*

*Tindal*, C.J.—The only question is, whether, assuming the sale of the bankrupt's goods to

have been made by him with the fraudulent purpose of delaying his creditors, for his own benefit or that of the defendant, such sale amounted to an act of bankruptcy, when the purchaser acted *bond fide*, and in ignorance of the bankrupt's purpose. The words descriptive of an act of bankruptcy, in 6 G. 4, c. 16, s. 3, are, "shall make or cause to be made, any fraudulent gift, delivery, or transfer of any of his goods, with intent to defeat or delay his creditors." In this case, there appears to have been a fraudulent intent on the part of *Creed*, to defeat his creditors, for the defendant's benefit; but there was no gift, delivery, or transfer of goods to the defendant, he being only the agent of the seller. And it appears that the goods remained under the control of the bankrupt himself, until they were delivered to the purchasers; and as to them, there was no delivery to them which was on their part fraudulent. Now the precise question whether fraud on the part of the buyer was a necessary ingredient in the act of bankruptcy contemplated by the statute, came under consideration in *Baxter v. Pritchard*, in which case the Court of Queen's Bench, after full discussion, and taking time to consider, decided that the sale of the whole of the trader's stock to a *bond fide* purchaser, who pays a fair price for it, in ignorance of any fraudulent intention of the seller, is not an act of bankruptcy. That judgment was pronounced by Lord *Denman*, who had entertained a different opinion at the trial. In delivering the judgment, *Rose v. Haycock*,<sup>e</sup> and *Cook v. Culdecoff*,<sup>f</sup> were referred to, in which latter case Lord *Tenterden* held, that a sale cannot be considered a fraudulent transfer, unless it takes place under circumstances which ought to induce a buyer of ordinary understanding to believe that the seller means to get money for himself in fraud of his creditors, and that the sale is effected for that purpose. On the ground, therefore, that there was no delivery at all of any goods to the defendant, and that there was no sale that was fraudulent on the part of the buyers, we think that the learned judge's direction was correct, and that this rule must be discharged.

Rule discharged. — *Howard, assignee of Creed, a bankrupt v. Bartlett*, H. T. 1840. C. P.

### Exchequer of Pleas.

JUDGE'S POWER.—INSPECTION OF PREMISES.  
—ATTACHMENT.

A Judge has no power without consent to order a defendant to allow the plaintiff to enter and inspect the work done by the latter on the premises of the former, for the purposes of an action then pending between the parties.

*Cresswell* shewed cause against a rule obtained by *Adams*, Serjt. for setting aside a judge's order. It was an action brought by

<sup>a</sup> 1 Ad. & El. 456.  
<sup>b</sup> 6 Bing. 363.  
<sup>c</sup> 9 Bing. 107.

<sup>d</sup> 6 Ad. & El. 899.

<sup>e</sup> 6 Ad. & El. n.  
<sup>f</sup> 1 M. & W. 522.

the assignees of a bankrupt to recover compensation for work and labour done by the bankrupt, for the defendants at the Strand Union poor-house. The work consisted of setting up grates, and putting other fixtures to the premises. After declaration delivered, application was made for further and better particulars, which was consented to on the usual terms; the plaintiffs then obtained an order, made without the consent of the defendant, from Rolfe, B., for allowing the attorney of the plaintiffs, the bankrupt, and any number of witnesses, not exceeding four, on his behalf, to examine the work done, and the materials provided by the bankrupt, for which this action was brought.

*Adams, Serjt.*, in support of the rule, contended, that the judge had no power to make such an order, it amounting in substance to a permission to a party to the suit to enter on the freehold of his opponent.

*Lord Abinger, C. B.*—This order, if valid, is sufficiently absolute in its terms to be enforced by attachment, if disobeyed; but it is one which no judge has power to make. If parties refuse such a reasonable thing as to grant an inspection, it may be a matter of argument and observation, but they cannot be compelled to do so.

Rule absolute.—*Turquand and another, assignees of Taylor, a bankrupt v. The Guardians of the Strand Union, H. T. 1840. Exch.*

#### LEVARI FACIAS.—SEQUESTRATION.—IMPROPER RETURN.

*The Court will allow a writ of levavi facias, improperly returned by the bishop, to be taken off the file and re-issued to that officer.*

*Humfrey* moved for a rule to take the writ of *levavi facias* in this case off the file, in order that it might be sent back for the bishop to make a proper return thereto. In this case a writ of *levavi facias* had been issued to the Bishop of Exeter against the property of the defendant. The bishop, when ruled to return what he had levied on the writ, pursuant to the sequestration, instead of making his return and retaining the writ, sent it back, with the inde of its execution indorsed.

*Humfrey* cited *Disney, Executor of Disney v. Eyre.*<sup>a</sup>

*Per Curiam*.—You may take a rule *nisi*.

*Humfrey* then applied to have the rule absolute in the first instance.

*Lord Abinger, C. B.*—The plaintiff ought not to suffer from the mistake of the bishop; and as there do not appear to be any intermediate incumbrancers, it is not easy to see on whom a rule *nisi* could be served. The rule may therefore be absolute in the first instance.

Rule accordingly.—*Alderton v. St. Aubyn, H. T. 1840. Exch.*

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES,

##### House of Lords.

*Copyholds Enfranchisement.* Ld. Brougham.  
[In Select Committee.]

*Prisons Act Amendment*  
[Passed.]

##### House of Commons.

To amend the Law of Copyright.  
[In Committee.] Mr. Serjt. Talfourd.  
To extend the Term of Copyright in Designs  
of woven Fabrics. Mr. E. Tennant.  
[In Committee.]

To carry into effect the Recommendation of  
the Ecclesiastical Commissioners.

Lord J. Russell.  
To extend Freemen and Burgesses' Right of  
Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.  
To amend Tithes Commutation Act.

[In Committee.] Sir. E. Knatchbull  
Vagrants' Removal.  
[For second reading.]

Small Debt Courts for

Aston,	Marylebone,
Barkston Ash,	Tavistock,
Bolton,	Newton Abbott,
Brighton,	Wakefield Manor.
Liverpool,	

Summary Conviction of Juvenile Offenders.  
[For second reading.] Sir E. Wilmot.

To amend the County Constabulary Act.  
Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and  
to allow Unions. Mr. Mackinnon.

#### THE EDITOR'S LETTER BOX.

*The Quarterly Analytical Digest of all the Cases reported in all the Courts, from November last to the present time, has been published. This is the first part for the present year.*

The letters of Z.; "A Student"; A. Z.; A. N.; W. F. F.; D. D.; T. H.; and "A Solicitor" have been received.

Several books and pamphlets which we have received shall be noticed at the earliest opportunity.

The number of letters which we receive since the reduction of postage is greatly increased: the earliest possible attention shall be paid to their contents.

# The Legal Observer.

SATURDAY, FEBRUARY 29, 1840.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## PARLIAMENTARY PROCEEDINGS.

In the absence of a general measure for the establishment of County Courts, we have had our attention called to the Brighton Small Debts Bill, which is now before the House of Commons, and which, we believe, is intended to be the model on which all similar bills will be framed. The Judge of the Court, who is to be appointed by the Lord Chancellor, is to be a barrister of seven years' standing and practice, or an attorney of one of the Superior Courts, certified by three Judges of the Superior Courts to be a fit person to be appointed a Judge of the Court. The Judge is to be removable by the Lord Chancellor for misbehaviour. He is empowered to appoint a deputy (being a barrister of seven years' standing, or an attorney of seven years' practice) to act during his illness or unavoidable absence. The justices of the quarter sessions, with the authority of the Judge, may appoint an attorney of one of the Superior Courts as clerk of the court, and may remove such clerk, and also a treasurer and other inferior officers. The jurisdiction of the Court is to extend to all debts (wherever the cause of action may have arisen) where the sum sought does not exceed 15*l.*, with a proviso that the Judge is not to determine any action in which the title to lands may come into question, or relating to any will or settlement. The concurrent jurisdiction of the Superior Courts and of all other Courts having jurisdiction within the limits of this Court is expressly saved. Causes are not to be removed into any Superior Court except by leave of a Judge of each Court, and then only where the amount exceeds

5*l.* The interval between holding Courts is to be in no case more than a month. Either party may require a jury to be summoned on giving five days' notice, and each juror is to receive 5*s.* per day, to be paid by the parties, or in case of deficiencies, from the general fund of the Court. Not more than five or less than three jurors (in the discretion of the Judge) are to be impanelled. In jury trials the Judge may order a new trial on the application of either party. The Judge, clerk, and bailiffs are to be remunerated by fees, a schedule of which is annexed to the act; and it is provided that six months after any general act shall have passed for the recovery of small debts, the operation of which shall be inconsistent with the powers given by this act, the jurisdiction of the Judge shall cease.

The Penny Postage Act is now in full operation, and we are persuaded that the profession in many ways feels its advantages. It affords the power of an easy transmission of documents to and from London, which is frequently attended with great benefit. We now await the introduction of the stamps, which will complete the measure. This will be the most difficult part of the whole.

Mr. Ewart has moved for certain returns connected with the Serjeants. In the mean time the order may be considered revived, having received five accessions. Some discussion has recently taken place with respect to the precedence of the Serjeants. The Serjeants named in the warrant of the 24th of April, 1834, by virtue of that warrant ranked before the Queen's Counsel appointed after that day; and it has been argued that if that warrant is bad in part it is bad altogether, and that

the ancient precedence of the Queen's Counsel should be restored. We understand, however, that this precedence will not be disturbed, although, of course, the five gentlemen just appointed to the coif will rank after all Queen's Counsel, present and future.

### THE COPYHOLD ENFRANCHISEMENT BILL.

THE Copyhold Bill, which is now before a Select Committee of the Lords, has called forth a sensible pamphlet<sup>a</sup> from Mr. Bray. It fairly addresses itself to the real difficulties of the question, and as we consider that our readers are now pretty well informed on this subject, we shall at once proceed to make some extracts. We may state that Mr. Bray is generally in favour of Mr. Stewart's Bill, in the shape in which it reached the House of Lords, but that he thinks some of the details might be improved; and first, as to the proportion of Copyholders in a manor, who should bind the rest:—

"As to the proportion, if any, which should be binding on the whole, it is to be remarked that in voluntary commutations under the Tithe Act, it has been found difficult to procure the consent of two-thirds of the tithe-payers, if a fourth, or even a fifth of them dissent, so many persons taking no part, either from absence or aversion to the trouble of inquiry. The writer of these remarks, when opposing a scheme for a wholly compulsory enfranchisement, which was very popular some years ago, suggested that two-thirds should bind the rest, and he remains of the same opinion; but as the establishment of the Tithe Commission now affords an opportunity of effecting voluntary enfranchisement by means of a schedule and award, it deserves consideration whether an enabling bill should not be first passed to prepare the way or try the ground for a more effective measure. The existence of a board possessing the confidence of the land-owners, on which a copyhold commission may be grafted without much expense to the country, offers great facilities for enfranchisement, particularly in the protection of entailed estates, and of tenants who cannot afford to pay for professional assistance.

"Supposing it determined that a certain proportion of the tenants, whether two-thirds or three-fourths, should bind the rest, it is important for the protection of the poorer tenants that the votes should be fairly reckoned.

<sup>a</sup> Remarks on the Difficulties of Commuting Manorial Rights, and on the Customs of Manors in various parts of England. By Reginald Bray, Esq. Longman and Co., 1840.

When it is intended to give the lord a gross sum for all his manorial rights, the tenants will generally protect one another; but when it is found more practicable to put a separate sum on each of the lord's rights, which is likely to be the case in manors where fines or heriots are not paid by all, it requires great care to frame a clause which will give to each tenant a vote proportionate to his interest in the question. Thus, if the tenants at fines arbitrary, agree with the lord to give him a certain amount for all his fines, and the tenants, subject to heriots only, are to pay a separate sum, it is necessary to provide that the votes of the latter shall be taken, not according to the value of their land, which has very little bearing on the value of the heriots, but according to the number of heriots which they are liable to. So with regard to timber, the interest in which is not according to the quantity of land, or even the quantity of timber, but according to the surplus above the demand for repairs. If A. has ten acres well timbered, without a house or buildings on it, it is very desirable to him to be enabled to cut it for sale or use elsewhere without a license; while B., the owner of another ten acres, having as much timber, but not more than enough for the repairs of his buildings, will derive little, if any, advantage from its being enfranchised. Mr. Stewart endeavoured to overcome the difficulty by providing a general rule for taking the votes in ordinary cases, and giving power to the Commissioners to make a special rule when the circumstances required it. If he had not given the Commissioners such a power he must have laid more restrictions on the form of the agreement, and thus impeded enfranchisement."

Then, as to the protection of the poorer tenants:—

"Another point to be considered for the protection of the poorer tenants is the cost of enfranchisement, which ought to fall very lightly on them, because they will save so little expense by the change of tenure. If Mr. Stewart's bill were to pass, the costs would in most cases be inconsiderable, as there are few parishes which have not been already mapped and valued for the purposes of the poor law, and the task of inspecting the court rolls to ascertain that the tenures are correctly stated would be part of the onerous duties of the Commissioners, and therefore no expense to the tenants in general."

We shall next extract Mr. Bray's remarks as to the discharge of lands from heriots, and on that vexed question—compensation to stewards.

"It has been proposed that lords of manors should be empowered to discharge heriots alone, leaving their other rights as they now exist. There is only one objection to this, which is, that the conversion of copyhold into freehold property, being, in a public point of view, of much more importance than the abolition of heriots, we ought not to give the lords

or tenants of manors the assistance of a public commission, unless on the condition of making enfranchisement complete.

"With respect to the claims of stewards and bailiffs, the Commissioners should award compensation out of the price of enfranchisement to those who have appointments for life, or for a term, unless the agreement provides for it. To those who have no such appointments the lord of the manor can make or require from his tenants such compensation, if any, as he thinks proper, except that in the case of tenants for life the commissioners should see that it is not excessive."

We shall conclude by some information which Mr. Bray has collected, as to the various customs of manors, which surely alone furnishes a reason for the giving of the utmost facilities for enfranchisement of a tenure subject to rules so conflicting and inconvenient.

"The tenure generally complained of, and the enfranchisement of which has been the chief object of the various copyhold bills brought before Parliament, is copyhold at fines arbitrary. This tenure prevails to a large extent in Surrey, Sussex, Hampshire, Essex, Suffolk, Norfolk, and the midland counties. When the fine is arbitrary, the lord of the manor may assess it on the admittance of a single life, whether on death or surrender, at any sum not exceeding two years' improved value, deducting the quit-rent. The extreme amount, however, is seldom taken. A year and a half's income is the fine usually charged to a surrenderee. The origin of this indulgence was probably the lord's wish to encourage changes, and to induce purchasers to take admittance without evasion or delay. In some manors, particularly in those which have not changed hands for a length of time, the fines have been assessed with still greater moderation, both on death and surrender; and not unfrequently the tenants have sought to avail themselves of the lenity of successive lords, to establish a custom more favourable to themselves than the limit of two years' value; but the courts of law have not yet sanctioned such an encroachment. When two lives are admitted, a fine and a half-fine are taken; when three lives, a fine and three-quarters, and so on for any number.

"Copyhold land at fines arbitrary is generally subject to heriots of the best animal on death, and not unfrequently, in Surrey and Sussex, on surrender also. Heriots in kind are much more common in the South than the North or West of England, and freehold as well as copyhold land is often subject to them. Many instances may be found in Surrey of small portions of land charged with so many heriots, that if the owner were to die possessed of valuable horses, the heriots would exceed the value of the estate. A noble duke possesses about twenty acres of common field land in Surrey, which is subject to as many heriots of the best animal; and a gentleman

died recently in the same county, on whose death more than fifty heriots were seized. It is seldom that the custom permits the best good [or chattel] to be taken, but when it does, the right is of a still more odious nature. The usual composition for a heriot in kind, when marked by the bailiff, is two-thirds of the value; when not marked, as it seldom is in the North and West of England, a composition of a few pounds is taken.

"Copyhold tenants at fines arbitrary have generally no power to cut timber without a license. The fine usually required for a license is one third of the value of the trees. The right to timber is one from which the lord derives so little advantage, that it is frequently enfranchised to the tenant for a moderate sum. One-third of the value of all the timber and tellers standing on the land has been considered a fair price for the lord's right. Fines for licenses to let do not often exceed one shilling a year, and are of no value to the lord except as they enhance the value of enfranchisement to the tenant.

"In the Southern counties it seldom happens that all the copyhold land in the manor is subject to the same manorial rights. One tenant pays a fine arbitrary, another a fine certain, as, for instance, a year's quit-rent. Some are exempted from heriots in kind, while their fines are uncertain; others are subject to heriots of the best beast, although their fines are fixed. There are two considerable manors in Surrey, in which the tenant is only liable to one heriot, whatever number of estates he may have acquired. It is not uncommon for the fines to be arbitrary in Nottinghamshire, Yorkshire, Cumberland, and other counties in the North of England, but more frequently they are fixed, and very moderate, as, for example, sixpence for a messuage, and fourpence an acre for land. It is no great hardship, that in some of these manors it is the custom for the mortgagee to take admittance. There are manors, although not many, in which a fine is payable on the death or change of the lord, and if the fine is not fixed, this is the worst tenure of all.

"In Gloucestershire, and many parts of the West of England, there are copyholds held as fines which are really arbitrary. They are, in fact, more like leaseholds determinable on lives, than copyholds, for they are considered personal property. The tenant is admitted for the lives named on payment of such a fine as the lord considers equal to the value of the grant or renewal, and no fine accrues on the death or surrender of the tenant on the rolls. The lord is not in general under an obligation to renew, and therefore the tenure is becoming extinct, except in manors belonging to corporate bodies.

"The custom of descent varies not only in the same parish, but in the same manor. There are manors in Sussex, in which what is called assert land, (having been taken from a forest for cultivation) descends to the eldest son, while other copyholds in the same manor descend to the youngest. In one part of a parish in Surrey, the widow can claim free-

bench on payment of one penny; in another she has no claim whatever. In a large manor in Northumberland, the Salique law prevails. No female can be admitted, but the land will rather escheat to the lord. Sometimes the eldest of the daughters inherits, sometimes all; and it is not uncommon for the eldest brother to succeed to land which he could not have inherited from his father. Gavelkind descent is unusual in copyhold property, but there are instances of it. Such indeed is the variety of customs, that they seem to have proceeded from the caprice, rather than the policy of the lord.

"Few manors are complete within an ambit. In Surrey and Sussex, there are instances of lands paying quit-rent at the distance of ten miles from any other part of the manor. It is probable that all tenants who paid rent at the mansion of the lord became tenants of his manor. Freehold land is generally more remote from the manor-house to which it pays quit-rent than copyhold, and, from the difficulty of identifying it, is often more troublesome than profitable to the lord.

"The stewards' fees vary nearly as much as the lords' rights. They will generally be found high or low, according to the class of people who become tenants. Near London and in towns, the fees are apt to be high; in remote districts, and where the population is poor, they are low. The fees and stamp for admitting an heir to a single copyhold tenement generally come to about four or five pounds, and the same on a purchase, exclusive of the surrender and *ad valorem* duty. This is not much to pay for the security and simplicity of his title, and therefore the tenant seldom complains of the steward's fees, except when his property is partly freehold and partly copyhold, and he has to pay the expense of two titles and two conveyances."

## THE PROPERTY LAWYER.

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### LANDS CREATED BY DERELICTION AND ACCRETION.

We shall briefly notice the law on the subject of lands created by dereliction and accretion, and we shall take it as stated by Mr. Stewart, in his edition of the second volume of Blackstone, pp. 168, 169.

"In some cases, where the laws of other nations give a right by occupancy, as in lands newly created by the rising of an island in the sea, or in a river, or by the alluvion or the dereliction of the waters; in these instances, the law of England assigns them an immediate owner. For Bracton tell us (l. 2, c. 2) that if an island arise in the middle of a river, it belongs in common to those who have land on each side thereof; but if it be nearer to one bank than the other, it belongs only to him who is proprietor of the nearest shore;

which is agreeable to, and probably copied from, the civil law, (Inst. 2, l. 22). Yet this seems only to be reasonable where the soil of the river is equally divided between the owners of the opposite shores; for if the whole soil is the freehold of any one man, as it usually is whenever a several fishery is claimed, (Salk. 637) there it seems just (and so is the constant practice,) that the eyotts or little islands arising in any part of the river shall be the property of him who owneth the piscary and the soil. However, in case a new island rise in the sea, though the civil law gives it to the first occupant, (Inst. 2, l. 18) yet ours gives it to the king. (Bract. l. 2, c. 2; Callis of Sewers, 22.) And as to lands gained from the sea, either by alluvion, by the washing up of sand and earth, so as in time to make *terra firma*; or by dereliction, as when the sea shrinks back below the usual watermark: in these cases the law is held to be, that if this gain be by little and little, by small and imperceptible degrees, it shall go to the owner of the land adjoining. (2 Roll. Abr. 170; Dyer, 326; *Rex v. Lord Harborough*, 3 B. & C. 106; Aff. Dom. Proc. 5 Bing. 163.) For *de minimis non curat lex*: and besides these owners being often losers by the breaking in of the sea, or at charges to keep it out, this possible gain is therefore a reciprocal consideration for such possible charge or loss. But, if the alluvion or dereliction be sudden and considerable, in this case it belongs to the king; for, as the king is lord of the sea, and so owner of the soil while it is covered with water, it is but reasonable he should have the soil, when the water has left it dry. (Callis, 24, 28.) So that the quantity of ground gained, and the time during which it is gaining, are what make it either the king's or the subject's property. In the same manner, if a river running between two lordships, by degrees gains upon the one, and thereby leaves the other dry; the owner who loses his ground thus imperceptibly, has no remedy; but if the course of the river be changed by a sudden and violent flood, or other hasty means, and thereby a man loses his ground, it is said that he shall have what the river has left in any other place as a recompence for this sudden loss." (Callis, 28.) It is also the law, that if the sea by gradual and imperceptible progress encroach upon the land of the subject, the land thus covered with water, belongs to the Crown. This was decided in a very recent case. Lord Abinger, C. B., said. "This case appears to me to be free from difficulty. If the Crown cannot adduce the authority of many decided cases in support of its claim, it is because in principle no doubt could be entertained upon it. It is admitted that as between subject and subject, the law as to gradual accretion is settled by the case of *Rex v. Lord Yarborough*, (3 B. and Cr. 91; S. C. in 5 Bing. 163.) The principle there established is not peculiar to this country, but obtains also in others, and is founded on the necessity which exists for some such rule of law for the permanent protection and adjustment of property. It is different in

deed where the change occurs by a sudden advance or recession of the water. In Scotland, a river containing a valuable salmon fishery, belonging to the present Lord Chief Commissioner Adam, was suddenly transferred to the land of his neighbour. Afterwards, by another equally violent effort of nature, the river returned to its former channel; but in neither case did the owner of the bed of the river lose his right to the soil. But in all cases of gradual accretion, which cannot be ascertained from day to day, the land so gained goes to the person to whom the land belongs to which the accretion is added; and *vice versâ*. That is the rule between subject and subject; but it is said to be different as between the Crown and subject. But Sir F. Pollock says, we all hold by grant from the Crown: then the Crown holds by the same rights and with the same limitations as its grantee. This being then the case of a gradual access of the water, it makes the land now between high and low water mark the property of the Crown. No authority is needed for this position, but only the known principle which has obtained for the mutual adjustment and security of property. *Alderson, B.*—I am of the same opinion. I think the question is precisely the same, whether the claim is made as against the Crown or the Crown's grantee. Suppose the Crown, being the owner of the fore shore, that is, the space between high and low water mark, grants the adjoining soil to an individual; and the water gradually recedes from the fore shore, no intermediate period of the change being perceptible; in that case the right of the grantee of the Crown would go forward with the change. On the other hand, if the sea gradually covered the land so granted, the Crown would be the gainer of the land. The principle laid down by Lord Hale, that the party who suffers the loss shall be entitled also to the benefit, governs and decides the question. That which cannot be perceived in its progress is taken to be as if it never had existed at all. *Gurney, B.*, and *Maule, B.*, concurred. Judgment for the Crown. *In re Hull and Selby Railway*, 5 M. and W. 327.

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#### NOTICES OF NEW BOOKS.

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*Compendium of the Laws of England, Scotland, and Ancient Rome, for the Use of Students. Parts I. and II. Of Marriages.*  
By James Logan, Esq., Advocate. Fraser, Edinburgh : Maxwell, London. 1839.

THE author of this work has attempted a new method of studying the law. Our readers are all well aware of the plan of Blackstone, who treated (after the manner of Justinian's Institutes) of the rights of persons; the rights of things (or the laws of property); of private wrongs; and public

wrongs. Mr. Logan does not, indeed, assert with any positiveness, that his mode of arranging the doctrines of the law is better than that of the learned commentator; but he contends that a change will be beneficial, by presenting the subject in a new light.

This proposal is not, however, altogether new, for Mr. Wooddeson, in his lectures on the law, departed from the classical plan, and pursued an arrangement of his own. The several Abridgments and Digests of the law may also be considered as other methods of study. The latter works contain many excellent outlines of particular branches of the law; but being compiled in alphabetical order, the student cannot conveniently avail himself of their contents, without the constant advice of some competent instructor, who may point out the succession in which the principal articles should be read.

Mr. Logan first takes up the subject of marriage. He considers that this contract, and the rights connected with it, are so important that it may be conveniently taken as the subject with which to commence a compendium of the law. "From marriage," he says, "the principal relations which the law contemplates are derived. On it the descent of real and personal property depends. With it, the most important rights of persons and things are mediately or immediately connected."

We will first state the general scope of Mr. Logan's labours, and then consider whether his plan is likely to facilitate the acquisition of legal knowledge, in comparison with the plan of the commentaries.

The work, so far as it has been published, comprises; 1. The requisites of the Contract of Marriage. 2. A summary of decisions on Promises, &c. 3. The Wife's acts before Marriage. 4. Acts of the Wife after Marriage. 5. Grants and Contracts between Husband and Wife. 6. Whether admitted as Evidence for or against each other. 7. Divorces *à mensa et thoro*. 8. Divorce *à vinculo matrimonii*. 9. Bigamy. The author then enters on the Scottish, and afterwards on the Roman Law of Marriage,—the consideration of which we may defer for the present, if not *sine die*.

The principal objection to the plan of Mr. Logan appears to be, that he mixes up several distinct systems of law, founded on different principles, and each having a different origin. Thus the validity of the contract of marriage is determined partly by the Ecclesiastical Courts, and partly by the Courts of Law and Equity. Mr. Logan, under the head of "Decisions on Promises

of Marriage," treats of actions for the breach of such promises, the pleadings therein, the evidence, the defence, and the jurisdiction in Equity regarding settlements. In the course of a few pages, therefore, the student is abruptly introduced (supposing this to be his first book) into detached parts of the Ecclesiastical, the Statute and Common Law, the Principles of Equity, and various matters of practice, pleading, and evidence.

Proceeding a little further, we come to the fifth Chapter, in which the Grants and Contracts between the Husband and Wife are treated of, with their mutual interests in each other's estate and property. Here we have opened up a large field of the law of real property. Then comes (as a part of the Common Law again) the Privileges of the Wife from Arrest; and this is followed by the Incapacities of the Wife; the Suing of Husband and Wife, or suing either of them alone; the Pleadings, &c.

The 7th and 8th chapters on Divorce, are of course peculiarly of ecclesiastical cognizance, and the 9th on Bigamy, comes under the branch of Criminal Law.

Although, however, we cannot subscribe to Mr. Logan's new Readings of the Law of England, as any improvement upon the ancient ways of study, we do not mean to say that his labors are without merit; on the contrary, we think that those who have leisure to peruse, not only Blackstone, but Wooddeson, and the present author, will be benefited thereby. As cited by Mr. Logan from Sir John Herschell, "It is always of advantage to present any given body of knowledge to the mind, in as great a variety of different lights as possible." Our only wish is, that the student (for whose use Mr. Logan expressly writes) should first make himself master of such parts of the law as remain unaltered, according to the admirable method of Blackstone, and this or other works aiming at the same object of elementary instruction may then be profitably perused.

## NEW BILLS IN PARLIAMENT.

### PRISONS ACT AMENDMENT RELATING TO DEBTORS.

By the 2 & 3 Vict. c. 56, it is among other things enacted, that the prisoners of each sex in the gaols and prisons therein mentioned should be divided into the classes therein also mentioned and set forth, and that debtors in those prisons in which debtors might be lawfully confined should form and constitute the

first of such classes: And by such statute it is also enacted, that certain rules and regulations therein prescribed and set forth should be observed in every prison in England and Wales in addition to and in amendment of the other rules and regulations which should be in force in such prisons: and doubts existing whether the several rules and regulations prescribed and referred to in and by the said statute can be properly applied to *debtors* forming the said first class of prisoners, and to be observed in such parts of the said prisons as should be appropriated to the confinement of debtors: and inasmuch as several of such rules and regulations ought not to be applied to *prisoners for debt*, it is necessary and expedient that such doubts should be forthwith removed, and that such of the said rules and regulations only should be applied and observed, in regard to such first class of prisoners, as shall be made by the persons authorized by law to make rules and regulations for the government of the said gaols and prisons, and approved of by one of her Majesty's principal secretaries of state.

It is therefore proposed to be declared and enacted, that the said several rules, orders and regulations prescribed and set forth in the said statute are not and shall not be deemed to be applicable to the said first class of prisoners, and shall not be observed in that part of any gaol or prison where *prisoners for debt* shall be confined, except as by this act is hereinafter enacted and provided.

2. That in all prisons in which debtors may be lawfully confined, such and so many of the several rules, orders and regulations set forth and prescribed or mentioned or referred to in and by the said statute as shall be selected by the persons authorized by law to make rules and regulations for the government of the said prisons, and approved of by one of her Majesty's principal secretaries of state, shall be observed and applied in such parts of the said prisons as are appropriated to the confinement of debtors, and no other of such rules and regulations.

3. That it shall be lawful for the said persons authorized as aforesaid, with the approval of such secretary of state, from time to time to make such other additional rules, orders and regulations as may be required in regard to such class of prisoners.

## LAW OF ATTORNEYS.

THE several points contained in the reports of the Superior Courts published during the last three months, relating to the law of attorneys, are the following. They are extracted from the first part of our Analytical Digest for 1840.

### ATTORNEY.

"1. If a party applying to be admitted an attorney undergo the examination under R. H.

6 W. 4, but fail to obtain his certificate, he cannot be examined without giving a fresh term's notice. *In re Examiners of Attorneys*, 8 A. & E. 745.

"2. An attorney having been admitted in the Court of Common Pleas, in January, 1826, without fraud,—upon an affidavit that he was then an attorney of the Court of King's Bench, and upon producing his admission in that Court, in 1810, and reading his affidavit that he had paid the duty on the articles, and that he had been admitted an attorney of the Court of King's Bench,—the Court of Common Pleas refused in 1839 to strike him off the roll, on the ground that he had ceased to practice in 1820, had been re-admitted in the Court of King's Bench in 1823, but had not taken out his certificate after such re-admission till January 1836. *Paget v. Chambers*, 5 Bing. N. C. 630; and see *Wilton v. Chambers*, 2 N. & P. 392; 7 A. & E. 524; and Dig. for 1838, p. 79.

"3. Plaintiff being employed as an attorney to conduct an appeal against the removal of a pauper, omitted to enter and respite the appeal at the first sessions after the removal, and proceeded to the second sessions, after having served the respondents with a notice of the grounds of appeal, signed by himself, instead of the overseers of the appellant parish, the sessions having refused to hear the appeal: Held, that plaintiff was not entitled to recover for his services. *Huntley v. Bulwer*, 6 Bing. N. C. 111.

"4. The Court of C. P. will, under very special circumstances, relax the rules required to be observed on the re-admission of attorneys. *Ex parte Smith*, 7 Scott, 344.

"5. The Court of Q. B. will not allow an articled clerk to be examined before the expiration of his five years' service. *Ex parte Bartlett*, 7 Dowl. 699; S. C. 18 L. O. 335.

"6. Where an articled clerk's christian name has been incorrectly stated in the notice of admission, the Court of Q. B. will allow the notice to be corrected. *Ex parte Dukes*, 7 Dowl. 605; S. C. 18 L. O. 31.

"7. Where an attorney of the Court of Pleas of Durham, applies for admission into the Superior Courts at Westminster, the Court of Q. B. will not relieve him from undergoing the examination required by the new rules; but in case of not passing examination, he must make a subsequent application. *Ex parte Marshall*, 7 Dowl. 621.

"8. Where an attorney has practised seven years, and has been off the roll twenty-seven years, during which time he has not been engaged in the law, but then becomes a managing clerk in the office of an attorney, and swears to his capacity as a lawyer, the Court of Q. B. will allow him to be re-admitted. *Ex parte Brabant*, 7 Dowl. 622.

"9. The circumstance of an attorney holding a security for his claim, is not sufficient to induce the Court of Exchequer of Pleas to interfere in a summary way to compel him to account. *In re Lord Cardross*, 7 Dowl. 861."

#### CLERK OF THE PEACE.

"Where the town clerks of a borough always exercised the office of clerk of the peace by themselves or deputy, without any formal appointment thereto,—Held, that the deputy town clerk was not liable to penalties under the 22 Geo. 2, c. 46, for practising as an attorney at the borough sessions, without proof of his having acted as deputy clerk of the peace. *Faulkner v. Chevell*, 2 P. & D. 262; S. C. 18 L. O. 56."

#### COGNOVIT.

"1. In order to make a cognovit valid, its execution must be attested by an attorney attending on behalf of the defendant, other than the attorney acting for the plaintiff. *Mason v. Kiddle*, 5 M. & W. 513.

"2. In order to render a cognovit valid, according to the provisions of 1 & 2 Vict. c. 110, s. 9, although the attorney acting for the defendant may have been named by the plaintiff's attorney, it is no objection to the validity of the instrument that the defendant adopts him, if he has a full opportunity of exercising his discretion as to the adoption; but if the circumstances are such as to preclude such an exercise of discretion, the cognovit is bad. Therefore, where a defendant was about to give a cognovit, and was unacquainted with any attorney, and at his request the plaintiff's attorney sent his clerk for one, who came and acted in that capacity for the defendant, a request to that effect being written by the plaintiff's attorney in the margin of the cognovit, the Court of Q. B. set aside that instrument. *Barnes v. Pendry*, 7 Dowl. 747."

#### WARRANT OF ATTORNEY.

"The 1 & 2 Vict. c. 110, s. 9, requiring the presence of an attorney on behalf of a defendant executing a cognovit or warrant of attorney, does not apply where the defendant is himself an attorney. The provisions in the statute is for the benefit of the defendant only; and therefore a third party, who may be prejudiced by a judgment against his debtor, cannot object that no attorney attested the execution of the warrant of attorney on which such judgment is founded. *Chipp v. Harris*, 5 M. & W. 430

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### EXAMINATIONS FOR DEGREES IN LAWS AT THE LONDON UNIVERSITY.

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The following are the regulations at the examination for the degree of

#### BACHELOR OF LAWS.

*Period of the year.*—The Examination for the Degree of Bachelor of Laws shall take place once a year, and commence on the second Monday in November.

After the year 1841, no candidate shall be admitted to the examination for the degree of

B. L. until after the expiration of one academical year from the time of his obtaining the degree of B. A. in the university, or in one of the universities from which this university is or may be authorised to receive certificates.

*Certificates.*—Previously to the year 1842, candidates shall be admitted to examination for the degree of B. L., who have shewn evidence that they have completed their twentieth year, and who have produced a certificate of having been students during two academical years, at one or more of the institutions in connexion with this university; or have taken the degree of B. A. in this university, or in one of the universities from which this university is or may be authorised to receive certificates.

The certificates shall be transmitted to the registrar at least fourteen days before the examination begins.

*Fee.*—The fee for the degree of B. L. shall be ten pounds. No candidate shall be admitted to the examination unless he has previously paid this fee to the registrar; and if he fail to pass the examination, the fee shall be returned to him.

*How conducted.*—The examination shall be conducted entirely by means of printed papers.

*Subjects of examination.*—Candidates for the degree of Bachelor of Laws, shall be examined on the following subjects:—

A { Blackstone's Commentaries; or the three last volumes of Kent's Commentaries.

B { Rutherford's Institutes of Natural Laws; or the two portions of Dumont's edition of Bentham's Morals and Legislation, which contain the principles of a Civil Code, and the principles of a Criminal Code.

*Hours of examination*—The examination of the candidates shall take place on Monday and Tuesday, in the morning, from ten to one, and in the afternoon from three to six; and the candidates shall be examined in subject A. on Monday, and in subject B. on Tuesday. On Monday morning in the following week, the examiners shall arrange in two divisions, each in alphabetical order, such of the candidates as have passed.

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The following are the regulations relating to the examination for HONORS.

*Maximum for age.*—Any candidate who has passed, and has produced a certificate shewing that he has not completed his twenty-fifth year may be examined for honors; but in case any candidate should delay proceeding to the examination more than three academical years from the date of his passing the examination for the degree of B. A., he cannot be admitted to the examination for honors, unless he show evidence to the satisfaction of the examiners that he has been prevented up to that time from proceeding to the examination for the degree of B. L.

*Subjects of examination.*—Candidates for ho-

nors shall be examined in one or more of the following subjects:—

Jurisprudence.

Conveyancing.

Law of the Courts of Equity.

Law of the Courts of Common Law.

Roman Law, and the Law of the Admiralty and Ecclesiastical Courts.

Colonial Law.

The examination shall take place on Monday, in Jurisprudence; Tuesday, in Conveyancing; Wednesday, in the Law of the Courts of Equity; Thursday, in the Law of the Courts of Common Law; Friday, in the Roman Law, and the Law of the Admiralty and Ecclesiastical Courts; Saturday, in Colonial Law.

In determining the relative position of the candidates, the examiners shall have regard to the proficiency evinced by them in the B. L. examination.

The examiners shall publish, in the course of the ensuing week, lists of the candidates in the order of proficiency in each subject; but candidates shall be bracketed together, unless the examiners are of opinion that there is a clear difference between them.

*Scholarships.*—If in the opinion of the examiners any candidate shall possess sufficient merit, the candidate who shall distinguish himself most in jurisprudence, shall receive fifty pounds per annum for the next three years, with the style of "University Law Scholar."

The following are the regulations at the examination for the degree of DOCTOR OF LAWS.

No candidate shall be admitted to the examination for the degree of Doctor of Laws, until after the expiration of two academical years from the time of his obtaining the degree of B. L. in this university.

The fee for the degree of Doctor of Laws shall be twenty-five pounds. No candidate shall be admitted to the examination unless he has previously paid this fee to the registrar; and if he fail to pass the examination, the fee shall be returned to him.

#### EXAMINERS.

There shall be as many examiners in law as the number of candidates in the several departments may require; the candidates transmitting to the registrar their application to be admitted to a degree before the 15th of April of the year in which the examination is to take place; and the examiner or examiners shall be appointed at a meeting of the Senate, to be held between the last day on which such application can be received and the day of examination.

The following are the Regulations relating to the MODE OF CONDUCTING THE EXAMINATION.

Each examiner shall be present during the whole time that the candidates are engaged in writing answers to the questions in the papers set by him; but if a paper be set by more than

one examiner, the presence of one examiner shall be deemed sufficient. If from sickness or unavoidable necessity no such examiner should be able to attend, the registrar shall be present. Every member of the Senate, and examiner, shall have the right of being present during *viva voce* examinations, but only the examiners, specially appointed to conduct the examination, shall have the right to put questions.

All the examiners to whom any *viva voce* examination is entrusted shall be present the whole time during which such examination is continued.

No candidates shall be present except those under examination.

## GRIEVANCES OF THE PROFESSION.

### MONMOUTH SPECIAL COMMISSION.—MISTAKE OF TREASURY SOLICITORS.

Sir,

I BY no means mean to impute any blame either to Mr. Maule or Mr. Bouchier, the joint solicitors of the Treasury: they are, doubtless, very able men in their way,—but little used, from habit, to the technicalities of an attorney's office. The chief object of my communication is to call the attention of the profession to the fact of barristers being nominated, and that by act of parliament, Solicitors of the Treasury. Considering that there are many men in the profession equally as competent as these gentlemen to perform the duties, I do not see why the profession in such appointments should, as of late, be passed over. I feel confident, (and in this I believe I speak the sentiments of a majority of the profession) that had the late prosecution for treason been in the hands of any solicitor of respectable practice, the point reserved never would have arisen. I say this with good feeling to the present solicitors, who have never been used to such minor matters which are met with in the daily experience of an attorney's office.

BETA.

### COUNSEL'S FEES.

Sir,

In common with many members of the profession, I have had reason to complain of the absence of counsel in other courts when the causes in which they hold briefs have been called upon. In all such cases the fees should be instantly returned, and as they may be now irrecoverable in a court of law, I would suggest a legislative enactment, enabling parties to maintain actions for their recovery. I am satisfied this would operate beneficially in inducing counsel to do their duty. Counsel also should be enabled to recover their fees by action.

CIVIS.

## THE STUDENT'S CORNER.

### DOWER.

Sir,

If the case put by "Lex," p. 280, *ante*, is a real one, I have only to hope that he is fortunate enough to be concerned for the widow; for as to the soundness of her claim to the improved value there can be no doubt.

Under the old law it seems, dower attached to *lands* of which the husband was at any time seised during the coverture, and that after it once attached, it was not in the power of the husband to defeat it—and there the law stops. It goes not into any questions of *value*,—whether by manuring the ground beneath, or by erecting buildings upon it,—but gives the widow one-third of the *land*. During the coverture, the land may be improved in value or be diminished—but her right does not come into possession until the *husband's death*; and in whatever condition the land chances to be then, such she is entitled to one-third of. The widow need not care by whom the land has been improved, and if the purchaser chose to build on land out of which he knew an indefeasible claim would probably one day take effect in possession, without procuring any release of that claim, he must take the consequence.

If the widow's claim is doubted, we shall bear next perhaps of a contingent remainder-man's having to refund to the purchaser from the tenant for life, the value of all improvements, so as to reduce the value to the *status quo* when his remainder was limited.

Let "Lex" remember that the widow's right takes effect in possession on the land at the death of the husband; and such as she finds it there is no pretence to prevent her from taking.

J. S. T.

Sir,

In reply to the enquiry on the subject of Dower, made by your correspondent under the signature "Lex," (p. 280,) I presume that he intends to raise this simple question:—Whether A.'s widow is to be endowed according to the improved value, or according to the value of the land at the time of the sale by her husband?

It is difficult to gather from the books any distinct proposition as to the extent of her claim; and I would premise that in all the cases which I am enabled to cite here on the point, the dispute, as respected her right, had arrived at that stage in which an assignment by the sheriff was needful. I name this in order to render the language employed in my quotations from different authors generally intelligible. That one-third in *value*, and not in point of *quantity* merely, was what was contemplated by the old law, seems to admit of no doubt: thus, the only provision made for the security of the dowress, in the simple state of property in former times, was, by requiring the sheriff to assign her a third part of each

kind or denomination of the property, as a third part of the arable, a third part of the meadow, and a third part of the pasture, (see 1 Roll. Abr. 683). In accordance with this view of the matter, we find it laid down that, "if the wife be entitled to have dower of three acres of marsh, every one of the value of 12*d.*, the heire by his industry and charge maketh it good meadow, every acre of the value of 1*s.*, the wife shall have her dower according to the improved value, and not according to the value as it was in her husband's time; for her title is to the quantitie of the land, *viz.* one *just* third part, (Co. Litt. 32, a.) And again, "and the like law is if the heir improve the value of the land by building, and if the value be impaired in the time of the heire, she shall be endowed according to the value at the time of the assignment, and not according to the value as it was in the time of her husband, (*Ibid.* 32, a. n. 8). Whilst, however, we find the law thus laid down on the one hand, we find it on the other asserted by Perkins, s. 323, (how far in adherence to principle, I will not presume to decide) "that buildings or other improvements made by the alienee of the husband, shall not be included in the computation of value on the endowment of the wife;" "and yet," he adds, "if a disseisor build upon land which he hath by disseisin, and the disseisee enter, he shall have the building &c., and so shall it be if the feoffee upon condition broken, &c." So also in the Book (14) of Assize, p. 12, we find that, "a woman demanded dower of the third part of land, and the tenant said that he *bought* the land of her husband, not being built upon, and that he builded on it, and she had judgment of the third part, *salvis edificiis.*" Thus, then, stands the matter—as far as the old authorities go. Let us next see how far it is affected by decision; and here, after tolerably diligent search, I have to regret that the range of cases and authorities that can be brought to our aid should be so limited. I shall cite only two. In *Hoby v. Hoby*, (1683) the inclination of the Court seems to have been to adopt the principle that the one-third of the widow should be ascertained *by reference to a general estimate of the annual value.* And, in the comparatively modern case of *Stoughton v. Leigh*, (reported 1 Taunt. 402) a careful examination of the language of the certificate, will, I think, enable us to collect, there was as little disposition, as in the case before cited, to break in upon what may be called the old rule requiring the sheriff to assign a third part of each kind of property. My own impressions on the point, I confess, coincide with what I thus venture to conceive was *that* of the Judges in these cases: for (to come home to the question put by your correspondent, and applying a similar rule of reasoning to it,) I think scarcely any remarks more pertinent, and, at the same time decisive of the question, reasoning upon principle, could be penned, than those of a learned author (Mr. Parke) in his able work upon Dower, where he says (p. 257) "A house

erected upon another man's land, becomes attached to and parcel of the freehold, and ensures the title of the land; and if it shall go with the land to the person *absolutely* entitled thereto, it is not easy to understand why it shall not become subject to *particular* interests in the land."

In the case put by your correspondent, and *that* supposed in the first of the above authorities, there is this difference: in the former, at the time of the sale, the title of the wife (as between herself and the alienee) was not complete; in the latter case, of the heir, on the contrary, she had her title of dower consummated. But for that difference in the state of circumstances in the authority last alluded to, and the case now put, I should have considered *that authority* as completely in point in favour of the dowress in the present question.

On the whole, I agree in the opinion to which Mr. Parke, in the work from which I have already quoted, has come, *viz.* "that the understanding of the profession," would be found to be, that the wife shall be endowed of the land as she finds it at the time of her husband's death.

T. H.

## SELECTIONS FROM CORRESPONDENCE.

### NONPAYMENT OF COUNTRY AGENTS.

Mr. Editor,

I was glad to see this subject taken up by a Constant Reader in your number of the 25th ult. I am myself a sufferer by some of those London attorneys who omit to pay their country agents, and I am sorry to say that the experience of every country attorney with whom I have conversed on the subject, agrees with my own in that respect. I am afraid, the only remedy we have, is to sue these black sheep of the profession in the Courts of Request within their respective locality where the debts are (as is generally the case) of an amount cognizable by such Court. My practice, as far as I can adopt it, is that of prevention. Unless I am acquainted with the parties for whom I act, I always send the affidavit of service of summonses, and any other papers, to my agents, to be delivered to the parties on their calling and paying my costs. The grievance complained of, has, I believe, been brought before the Metropolitan Law Society, and it would be very desirable that they should suggest some remedy which might be generally adopted.

J. B.

[We suppose that the Law Society would also gladly find some available remedy for the nonpayment of the costs of London agents against country attorneys. The plan of T. B. seems an effective one for the security of country agents. The London agent, we presume, must depend on the ordinary remedy for debts, with a lien on the papers. ED.]

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## LEGACY.—MISDESCRIPTION OF LEGATEE.

*A testator gave the dividends of a fund to A., the widow of B., as long as she should remain single and unmarried, and in case of her assigning or anticipating the dividends, then to go over. A. had been privately married to a second husband, who was living, though she passed as the widow of her first husband, but she did not misrepresent her condition to impose on the testator, who was attached to her, and whose misapprehension of her condition was not alone the motive of his bounty: Held a valid legacy.*

Thomas Cobb, of Margate in the county of Kent, solicitor, by his will, after making provision for an illegitimate son he had by one Anne Grant, gave and bequeathed to his cousin William Cobb, and to his friends William Edmunds and Charles Cook, 1000*l.*, in trust to invest the same on securities, and pay interest and dividends to Maria, the wife of James Sandford, to her separate use, so long as she should remain the wife or widow of said James Sandford, remainder after her death or second marriage, to fall into the residue of his estate. The will then proceeded thus:—"I also give and bequeath to the said W. Cobb, W. Edmunds, and C. Cook, the further sum of 2000*l.* sterling, upon trust to invest the same upon government securities, upon trust to authorize and empower Lady Fanny Campbell, widow of the late Major General Sir Niel Campbell, to receive the dividends as they become due thereon, so long as she shall continue single and unmarried. But in case she sells, assigns, disposes of, or anticipates such dividends, I do hereby revoke the bequest so made for her benefit, and thereupon do will and direct that the said sum of 2000*l.* shall become part of the residue of my estate. I also give herewith to the said Lady Fanny Campbell, the sum of 500*l.* sterling, to be paid to her within two months after my decease, but in case there is any debt then due from her on a warrant of attorney, lately given to Meers Rae and Goodyear, I direct my executors out of the legacy, to pay such debt, and to pay the residue of such 500*l.* to Lady Fanny Campbell only. I also give her back the diamond ring she gave me, and request her to have the diamond reset in a mourning ring, and wear it for my sake." The testator after giving various other persons legacies, gave the residue of his personal estate and all his real estate to his cousins, J. M. Cobb, and the said Wm. Cobb, as tenants in common, and to their heirs, executors, administrators, and assigns, absolutely, but upon condition that they should carry his will into execution, and not take advantage of any technical objection to any bequest therein given; and he appointed them

and the said Wm. Edmunds executors of his will.

The testator died in 1834: the executors proved the will, but refused to pay the legacy of 500*l.*, or the interest of the 2000*l.* bequeathed to Lady Fanny Campbell, alleging, as the truth was, that when the acquaintance between her and the testator commenced, and ever since, she was not "Lady Fanny Campbell, the widow of Sir Niel Campbell," though she passed as such, but the wife of a Mr. Rishton, to whom she was married privately in 1829, soon after which they separated, and Mr. Rishton went abroad, she living in England and retaining her former name and rank as the widow of Sir Niel Campbell. The executors also set off against the legacy of 500*l.* a warrant of attorney for 389*l.*, executed by Lady Fanny Campbell, and found among Mr. Cobb's papers. Upon a bill filed against them by Mrs. Rishton (Lady F. C.) by her next friend, admitting that she was the wife of Mr. Rishton, and that he might be living, the Vice Chancellor decreed for payment of the interest of the 2000*l.* for her life, and for payment of the 500*l.*, deducting the unpaid amount of the warrant of attorney. The executors and residuary legatees appealed from that decree.

Mr. Wakefield and Mr. Randall in support of the decree.—The identity of person, and not of names, was what is necessary to the validity of the bequest, where there was no fraud or design to impose on the testator by the legatee's retaining her former name. It was quite common for ladies to retain their former name and title on a second marriage. It was not imputed to this lady that she used any artifice to impose on the testator; she had no idea that he would remember her in his will. The condition annexed to the gift being in restraint of marriage generally, was illegal and void.

Mr. Knight Bruce and Mr. Rudall, for the executors and residuary legatees, in support of the appeal. The gift of the interest of 2000*l.* failed as being given to a person who did not answer the description in the will, she not being "Lady Fanny Campbell, the widow of Major General Sir Niel Campbell," as the testator believed, but the wife of Mr. Rishton, who was then and still living. The gift was to her so long as she remained single and unmarried. These were words of limitation, not of condition, and if they were to be struck out, the testator's manifest intention would be defeated, for he expressly prohibited alienation; and marriage was alienation, and would pass the legacy into hands against which the testator expressly provided. The legacy of 500*l.* was on a different footing from the interest of 2000*l.*, and if that should be held good, the amount of the warrant of attorney was to be deducted from it.

Most of the cases that were cited, are noticed in the judgment.

The Lord Chancellor, after taking time to consider the case, gave his judgment to the following effect:—This case is different as to the two sums. The defendants insist that the

plaintiff is not entitled to either. Misapprehension of the testator as to the condition of the legatee, did not make the bequest of the interest of the 2000*l.* void. His Lordship would adopt the words of Lord Alvanley in *Kinnell v. Abbott*.<sup>a</sup> "I desire to be understood not to determine that where, from circumstances not moving from the legatee himself, the description is inapplicable, as where a person is supposed to be a child of the testator, and from motives of love and affection to that child, supposing it his own, he has given a legacy to it, and it afterwards turns out that he was imposed upon." "I am not disposed by any means to determine that the provision for that child should totally fail, for circumstances of personal affection for the child might mix with it, and might entitle him, though he might not fill that character in which the legacy is given," &c. But "wherever a legacy is given to a person under a particular character which he has falsely assumed, and which alone can be supposed to be the motive of the bounty, the law will not permit him to avail himself of it." That this plaintiff, notwithstanding her marriage with Mr. Rishton, still called herself Campbell, was not a misrepresentation with a view to impose on the testator, although she did assume in some degree before him that she had not married again after Sir Niel Campbell's death. The defendant's evidence clearly disproved that that assumed character was alone the motive of the testator's bounty. It was equally clear that he was attached to the plaintiff. The Court must be satisfied that the assumed character was the motive of the gift before it can determine it to be void. The testator's ignorance of the true condition of the legatee did not destroy the legacy. *Standen v. Standen*.<sup>b</sup> With respect to the legacy of 500*l.*, his Lordship read the words of gift, and expressed his opinion that they were not words of limitation as was argued for the appellants, but of condition subsequent and inoperative. *Marples v. Bainbridge*.<sup>c</sup> Sir Thomas Plumer's judgment in that case was objected to, but it would be found that it was supported by *Crommelin v. Crommelin*,<sup>d</sup> and *Bird v. Hunsden*,<sup>e</sup> in which last case considerable violence was done to the words of the will for the purpose of supporting the gift. The present case was rather peculiar in its circumstances, though not one of difficulty, and his opinion clearly was, that the decree of the Vice Chancellor was right in declaring the plaintiff entitled to both legacies, the one of 500*l.* being subject to whatever is due on the warrant of attorney.

Appeal dismissed with costs. *Rishton v. Cobb*.—Sittings at Lincoln's Inn, July 26th, and 27th, and December 16th, 1839.

<sup>a</sup> 4 Ves. 802. See pp. 808 and 809.

<sup>b</sup> 2 Ves. 599, see p. 592. <sup>c</sup> 1 Madd. 590.

<sup>d</sup> 3 Ves. 227. <sup>e</sup> 2 Swans. 342.

### Queen's Bench.

[Before the Four Judges.]

#### CORPORATIONS.

Before the passing of the Municipal Corporation Act, the members of a corporation authorised one of their body to defend on their behalf, several proceedings taken against them by quo warranto: he did so, and incurred considerable expense. The corporation then gave him a bond to secure repayment of these expenses, with interest. The bond was duly executed: Held, that this constituted a lawful debt, in respect of which he might sue the new corporation, elected under the Municipal Act.

**Debt on bond.** The bond was given under the following circumstances: The plaintiff had been the mayor of Dartmouth during the existence of the old corporation there. While he was filling that office in 1828, certain writs of quo warranto had been issued, calling upon different members of the corporation to shew by what authority they claimed to fill their respective offices. The corporation determined that returns should be made to these writs, and that in each instance the case should be contested at law. By the desire of the corporation the plaintiff undertook the task of managing the defence to the writs of quo warranto, and in performing it he incurred very large expences. The old corporation then gave him a bond for repayment with interest of those expences which he had incurred in defending the quo warranto suits. When the Municipal Corporation Act came into operation the new corporation refused to recognise the bond, and the present action was then commenced to recover the principal and interest. At the trial of the cause the defence set up was that the bond must be considered as obtained in fraud of the corporation, but a special verdict was found, stating that the bond had been fairly and honestly obtained.

Mr. Erle (with whom was Mr. Holdsworth) for the plaintiff.—The facts stated in the plea do not amount to a legal fraud. They shew that there was not at that moment any actual consideration, and that the defendants were not compelled to give the bond, but still the bond itself is in a valid form under the seal of the corporation. It was given in order to reimburse the plaintiff for expenses bona fide incurred by him on account of the corporation. That itself is a good consideration. As to the right of corporations to deal with their funds, the case of *The Mayor and Corporation of Colchester v. Lowton*<sup>a</sup> decided that corporations, of whatever nature, have at law a general right to alienate their lands held in fee, subject as to ecclesiastical, to the particular restraining statutes passed on that subject. This is in accordance with the principles to be found in Comyns' Digest.<sup>b</sup> To the objection that the members of the corporation cannot

<sup>a</sup> 1 Ves. & B. 226.

<sup>b</sup> Com. Dig. Franchise, F. 15.

vote away the money of the corporation, the case of the *King v. Watson*<sup>c</sup> affords a decisive answer. There, though the court made absolute a rule for a criminal information for a libel, on account of the terms in which a vote of this kind was made, it refused to take notice of the vote itself, and referred the parties on that point to the Court of Chancery. Now the case of *The Mayor of Colchester v. Lowton*, shews that the Court of Chancery recognises a power in the corporation to dispose of the property of the corporation. The argument that the corporation has now no such power, but can only dispose of the corporation money for purposes of a strictly public nature, does not apply to this case, for there was a perfectly valid bond before the passing of the Municipal Corporation Act, and a lawful debt was due before the existence of that act. This bond is therefore not affected by the *Attorney General v. The Corporation of Norwich*,<sup>d</sup> which is decided on the terms of that act alone, and the plaintiff is entitled to recover.

Sir W. Follett (with whom was Mr. Butt) for the defendant.—This bond is not excepted from the general provisions of the 92d sect. of the Municipal Corporation Act. This is not such a lawful debt as to permit its payment by the town council of the borough. In *The Queen v. the Corporation of Liverpool*,<sup>e</sup> the Court decided that the property of the corporation was held by the town council for public purposes alone, and therefore exempted it from rating. Can it be said that the payment of these expenses is a public purpose? It cannot. On the authority therefore of that case this action is not maintainable. Another reason is, that in the event of a deficiency in the corporate property, a rate must be raised on the inhabitants. No rate could be raised to pay this bond. The cases of *The King v. Watson*,<sup>f</sup> and *The Mayor and Corporation of Colchester v. Lowton*,<sup>g</sup> may be admitted; but they do not apply, for the power of the corporation to deal with the borough funds is now expressly restricted by the Municipal Corporation Act. As the dealing with these funds cannot, in the present instance, be justified under that act, because this debt cannot be said to be a payment for public purposes, the action cannot be maintained, and the verdict must be entered for the defendant.

Lord Denman, C. J.—This is a special verdict in an action of debt on bond. There was a question of fraud raised at the trial, but that question was distinctly negatived in point of fact by the jury, who found that the plaintiff was a member of the corporation of Dartmouth, and had great influence with that corporation; that there were writs of *quo warranto* filed against him and others, and that the plaintiff had paid the expences of defending the corporation against these proceedings, and that afterwards the seal of the corporation

was set to the bond to repay him the outlay he had made. If the Municipal Corporation Act had not passed, would this bond have bound the corporation? I think that it would. If the defendant had been the single member of the corporation attacked by the *quo warranto*, it might have been a good bond, for the right of the whole corporation might have depended on his title to his office. The reimbursement of the expences thus incurred, would be a good consideration for the bond under the old law. Then it is said, that the 92d section of the Municipal Corporation Act alters this, because an instrument like this must now have its future payment secured upon the rates, and not on the corporate property alone, and it is therefore supposed that the right of the corporation to make the borough liable to such payments must be construed more strictly than ever. The same question, however, occurs now as before. Is the debt a lawful debt? If there was a fraud in obtaining the bond, it would not be a lawful debt, but fraud in fact has been negatived by the jury. Then is it a lawful debt in any other manner of considering it? Suppose this argument:—suppose that the corporation, having, under the old law, the power to alienate the land, should have entered into an agreement to alienate, and then the Municipal Corporation Act intervened: would such agreement be lawful, and could it now be enforced against the new corporation? That mode of putting the question appears, at first sight, to be decisive against the right of the plaintiff; but when we come more attentively to consider it, the distinction is plain, for that would be merely the case of securing the future execution of an agreement, which would not give an action now, though it might have done so before the passing of the recent statute. But here, the whole matter was complete before the passing of that statute: the seal was set to the bond, and there was the existence of a lawful debt, when that statute came into operation. The recent statute does not relieve the corporation from previously existing lawful debts. Judgment must therefore be entered for the plaintiff.

Mr. Justice Littledale concurred.

Mr. Justice Williams.—I am of the same opinion. The form of the instrument here, implies a consideration, and makes it a lawful debt, unless there is something to prevent its being so. There is nothing of that sort here. Fraud, in fact, was distinctly negatived. The argument against the debt in this case, that the future payments may have to come out of the rates, would be equally good against all debts, however properly contracted before the passing of the act; and it seems to me to have no weight in the present instance.

Mr. Justice Coleridge.—This is a clear case, and the Municipal Corporation Act does not make any difference in the matter. If that statute had not passed, it does not seem capable of dispute that the action would have been maintainable, especially as fraud in fact has been distinctly negatived. It has been pressed

<sup>c</sup> 2 Term Rep. 199. <sup>d</sup> 2 Myl. & Cr. 406.

<sup>e</sup> Ante, 17 L. O. 219. <sup>f</sup> 2 Term Rep. 199.

<sup>g</sup> 1 Ves. & B. 226.

upon us, that by holding this bond to be good, we shall indirectly compel the corporation to employ the rates in discharge of the debt. We know nothing of the assets of the corporation. If there are no assets, and the law will not allow rates to be imposed for such a purpose as this, the plaintiff will have no remedy to recover his demand, but in the mean time, the possibility that such may be the case, is no answer to his right to maintain the action.

Judgment for the plaintiff.—*Wordsworth v. The Corporation of Dartmouth.* Q. B. F. J., Hil. Term. 1840.

### Queen's Bench Practice Court.

#### CALCULATION OF TIME.—FRACTION OF A DAY. —CONCURRENT PROCEEDINGS.

*Where it becomes necessary for the purposes of justice to consider the portion of a day, the Court will do so, and therefore where a defendant died between 11 & 12 o'clock, and a writ of sc. fa. was sued out between one and two o'clock on the same day against the defendant's goods, it was held to be irregular.*

*Chilton* obtained a rule calling on the plaintiff to shew cause why the sc. fa. issued in this case should not be set aside for irregularity. Judgment was signed on the 13th December, and the defendant died between eleven and twelve o'clock on the 16th. The writ issued, and was tested between one and two on the same day, and execution was levied under it.

*Richards* shewed cause and contended that the Court would not divide a day, that there was no such thing in law as the fraction of a day, and that this case was very distinguishable from *Thomas v. Desanges*,<sup>a</sup> where, until his surrender in discharge of his bail, the bankrupt might have legally disposed of his property. The case of *Watson v. Maskell*,<sup>b</sup> was exactly in point. There the plaintiff had obtained a verdict at the Spring assizes; the defendant died on the 18th April, costs were taxed on the 21st, final judgment signed on the 22d, and a sc. fa. issued on the same day, tested on the first day of the term; and the Court refused to set the writ aside on the ground of irregularity.

*Chilton* in support of the rule.—This execution was taken out and dated previous to the statute 3 & 4 W. 4, c. 67, s. 2, which enacts, that all writs of execution may be tested on the same day on which they are issued. In *Brocher v. Pond*,<sup>c</sup> it was held, that a sc. fa. on a judgment signed after a defendant's death in vacation, may be tested on the last day of the preceding term, notwithstanding the 3 & 4 W. 4, c. 67, s. 2, and that a party might still test his execution of the term generally where he was in circumstances for so doing. The question was, whether the Court would make a fraction of a day, and it was presumed the

Court would consider fractions of a day in all cases, where injustice would result from not doing so. In the case of *Roe d. Wrangham v. Hervey*,<sup>d</sup> which was an action of ejectment on the demise of an heir by descent, the demise, was laid on the day his ancestor died, and it was held good even after verdict. In *Coombes v. Pitt*,<sup>e</sup> Lord Mansfield said, "though the law does not in general allow the fraction of a day, yet it admits it in cases where it is necessary. In *Smallcombe v. Buckingham*,<sup>f</sup> two sc. fas. were delivered on the same day to the sheriff, who executed the last first: the execution was held good, but he was held liable to the plaintiff in the first. In *Sadler v. Leigh & another*,<sup>g</sup> the goods were seized under a sc. fa. the same day on which the party committed an act of bankruptcy, and it was held, that it was open to him to inquire at what time of the day the goods were seized, and the act of bankruptcy committed, and that the validity of the execution depended upon the priority.

*Putteson, J.*—If I am not to consider the fraction of a day, then the death and the issuing of execution must be regarded as simultaneous acts, whereas, the execution ought to issue before the death. The common sense of the case is, that where it is necessary to shew which of the two events first took place, the Court may enter into the question of a fraction of a day.

Rule absolute.—*Clinch v. Smith*, H. T. 1840. Q. B. P. C.

#### SUMMONS.—STAY OF PROCEEDINGS.—AMENDMENT.—SIGNING JUDGMENT.

*A summons to amend a declaration by a plaintiff operates as a stay of proceedings for one day, though not followed up by a second summons, and notice is given by the plaintiff, after the return of the summons, that he will not proceed with the amendment.*

*Roberts* obtained a rule calling on the plaintiff to shew cause why the judgment signed in this case should not be set aside for irregularity. The defendant's time for pleading expired on the 22d January. On the 20th January, the plaintiff served a summons returnable on the 21st, to amend his declaration. This was not attended on the part of the defendant. The plaintiff did not take out a second summons, he being advised it was not necessary to amend his declaration. The defendant's attorney inquired on the 22d, whether the plaintiff proposed to proceed with his application to amend; and being answered in the negative, on the evening of the 22d he served a summons, returnable at three o'clock on the 23d, for further time to plead. On the morning of the 23d, the plaintiff signed judgment as for want of a plea.

<sup>a</sup> 3 Wils. 274.

<sup>b</sup> 3 Burr. 1423; 1 Bl. 437.

<sup>c</sup> 1 Salk. 319; 1 Ld. Raym. 251.

<sup>d</sup> 4 Camp. 197.

*Hoggins*, shewed cause, and contended that the time for pleading having expired on the 22d, and the defendant's summons being returnable after the time at which he was entitled to sign judgment, namely, on the 23rd, it did not operate as a stay of proceedings: The plaintiff's summons, on the other hand, could not operate as a stay of proceedings.

*Roberts*, in support of the rule, submitted that the plaintiff's first summons operated as a stay of proceedings until the return of the second summons, which it is usual to take out; and he contended, that the attorney would conclude that a second would be taken out. This second operated as a stay of proceedings till the 23rd, and therefore the defendant had the whole of the 23rd to plead, whereas judgment was signed on the morning of that day. There was no case in point as to how far a plaintiff's summons operated as a stay of his own proceedings.

*Patteson*, J.—I am of opinion that this judgment is irregular. When the plaintiff took out his summons to amend his declaration, the defendant must have believed that he really intended to amend. Supposing that the defendant had, notwithstanding that summons, proceeded, and caused his plea to be prepared, after which, an amendment had been made by which the defendant would have been obliged to alter his plea altogether, would it be contended that the plaintiff could be called on to pay expences which the defendant had incurred uselessly, in drawing his pleas in the first instance? The plaintiff's summons, it appears to me was therefore a stay of proceedings for one day. It is true, in this case, the plaintiff gave notice he did not intend to proceed on his summons, but that tied the hands of the defendant to the last moment, and then he was also obliged to take out a summons for further time to plead; and because that was not made returnable until after the plaintiff was entitled to sign judgment, he did so. That is not only very sharp practice, but an irregularity.

Rule absolute.—*Hodgson v. Cayley*, H. T. 1840. Q. B. P. C.

when pleaded, and to be so entered of record; and referred to the schedule annexed, in which the words "in the year of our Lord" were introduced. He also quoted *Sewell v. Stanley Barnet*, decided by *Parke*, B., at chambers, in which this objection was held to be good.

*Patteson*, J.—I find that the case mentioned by Mr. *Cowling* was before my brother *Parke*, at chambers, and that he did set aside the demurrer. That is a decision of which I approve, and I must follow it. A record must be a more formal thing than a mere letter between the parties.

Rule absolute.—*Holland v. Thealde*, H. T. 1840. Q. B. P. C.

### Exchequer of Pleas.

COGNOVIT.—ATTESTING WITNESS.—ATTORNEY.

*The plaintiff's attorney cannot act as the defendant's attorney in attesting a cognovit pursuant to 1 & 2 Vic. c. 110. s. 9, although named by the defendant for that purpose.*

*Godeon* shewed cause against a rule nisi obtained by *Busby* for setting aside the cognovit in this case. It appeared from the affidavits that the defendant lived at Shaftesbury, and was there served by the plaintiff's attorney with a writ of summons, which had been sent down by his London agent. On receiving it, the defendant went to the attorney, to request him to obtain time for the payment of the debt, offering him 10*l.* in satisfaction of it, and also to pay him for his trouble in negotiating the matter on his behalf. The latter part of the offer was accepted, and the attorney in his books charged the defendant for the applications. It was subsequently agreed that the plaintiff should accept a cognovit, which was also sent from town to be executed by the defendant. The attorney then explained to him the necessity of his naming an attorney on his behalf, in compliance with the 1 & 2 Vict. c. 110, s. 9, whereupon the defendant said, "I name you;" and the instrument was executed accordingly.

*Godson* contended, that as the attorney had been previously employed for and paid by the defendant to act for him, and named at the time to attest the cognovit on his behalf, the provisions of the statute had been fully complied with.

*Busby*, in support of the rule, was stopped by the Court.

*Lord Abinger*, C. B.—It is clear that the attorney at Shaftesbury charged in his bill the London agent with all that was done by him in the transaction. It certainly was his duty to have informed the defendant, that in order to satisfy the statute, the presence of some other attorney would be requisite.

*Alderson*, B.—The original rule on this subject, which required the warrant of attorney to be executed in the presence of an attorney, was held to be sufficiently complied with by executing it in the presence of the attorney for the plaintiff. Afterwards, however, another

### INTITLING PLEADINGS.—SETTING ASIDE DEMURRER.—IRREGULARITY.

*It is a ground of setting aside a demurrer, that the words "in the year of our Lord" are omitted in its title.*

In this case the plaintiff demurred to the defendant's plea. The demurrer was dated the 17th January 1840, omitting the words "in the year of our Lord."

*Henderson* shewed cause against a rule which had been obtained by *Cowling* for setting aside this demurrer on the ground of irregularity. He contended that there was no express rule requiring the words "in the year of our Lord" to be used, and that here there was a sufficient certainty to a common intent.

*Cowling* supported the rule, and relied on the rule of H. T. 4 W. 4, which requires all pleadings to be intitled of the day and year

rule was framed, requiring the attesting attorney to be one expressly named by the defendant. Then came the act of parliament, which embodies the substance of both the rules in a law; and consequently rendering it necessary in all cases that the party attesting be some one, not the plaintiff's attorney, and to be expressly named by the defendant. Were we not to adhere to this construction, a wide door would be opened to fraud. An attorney attesting a cognovit under the circumstances here detailed, is not the person contemplated by the statute, and this rule must therefore be made absolute.

Rule absolute.—*Mason v. Kiddle*, H. T. 1840. Exch.

#### JUDGMENT AS IN CASE OF A NONSUIT.—STET PROCESSUS.—POVERTY OF DEFENDANT.

*Where, after issue joined it is discovered that the defendant is in a state of great poverty, it is a sufficient excuse for not proceeding to trial, and for discharging a rule for judgment as in case of a nonsuit, if the defendant will not consent to a stet processus.*

In this case a rule had been obtained for judgment as in case of a nonsuit, after issue joined.

*Martin shewed cause, and produced an affidavit, which stated as a reason for not going to trial, that after issue had been joined and before the cause went down for trial, it was ascertained that the defendant was in a state of very great poverty.*

*Parke, B.—You are entitled\* to have the rule discharged, unless the opposite party agree to enter a *stet processus*; otherwise, to be discharged without costs.*

Rule discharged.—*Lattice v. Sawyer*, H. T. 1840. Excheq.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES,

##### House of Lords.

Copyholds Enfranchisement. Ld. Brougham.  
[In Select Committee.]

Frivolous Suits Act amendment, touching costs.  
[For second reading.] Lord Deenan.

See the bill, p. 309, *ante*.

Rated Inhabitants Evidence.  
[For second reading.]

##### House of Commons.

To amend the Law of Copyright.  
[In Committee.] Mr. Serjt. Talfourd.

To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tennant.  
[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.  
Lord J. Russell.

To extend Freemen and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.

#### To amend Tithe Commutation Act.

[In Committee.] Sir E. Knatchbull.  
Vagrants' Removal.

[For third reading.]  
Small Debt Courts for

Aston,	Marylebone,
Barkston Ash,	Tavistock,
Bolton,	Newton Abbott,
Brighton,	Wakefield Manor.
Liverpool,	

#### Summary Conviction of Juvenile Offenders.

[In Committee.] Sir E. Wilmot.  
To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

For the entire Abolition of the Punishment of Death. Mr. Ewart.

#### Prisons Act Amendment.

[For second reading.]

##### CHANCERY RETURNS.

Returns from the Six Clerks and the Masters in Chancery have been printed.

##### MIDDLESEX REGISTRY OF DEEDS.

Returns have been ordered from this office of the Fees received, the Attendance given, the Holidays kept, and the Expences of the concern. Some reforms have been frequently suggested here, and also at the Chancery Inrolment Office.

#### THE EDITOR'S LETTER BOX.

The complaint of "A Subscriber" shall be communicated to the proper quarter, and we doubt not will be remedied.

The work mentioned by a correspondent has been received. The subject has been amply discussed in these pages; but we will advert to it again.

The letters of D. and T. M. have been received.

A Correspondent asks whether it is usual for conveyancers to receive papers from attorneys in the country, without the intervention of the agent in town? Whether there is any usage or custom, which would prevent a conveyancer so acting?

We recommend J. B. to write to the Committee of the Law Society on the subject of the lectures, or to the learned Lecturer to whom his letter particularly refers. We feel assured that the latter will attend to the suggestion, if made by any considerable number of the students.

The assizes at Liverpool will commence on Tuesday the 24th, and not on Monday the 23d, as appears in the Circuit Paper first issued.

Since the pamphlet on Chancery Reform, noticed p. 337, post, was published, the returns from the remaining five of the Six Clerks have been printed. The amount received by each is stated to be £1,622*l.* for 1838, and £702*l.* for 1839, but this is after deducting the land tax of £198*l.* and all salaries and expences.

# The Legal Observer.

MONTHLY RECORD FOR FEBRUARY, 1840.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## REFORM IN THE EQUITY COURTS.

We gladly urge the attention of our readers to a pamphlet written by Mr. Edwin W. Field, called “Observations of a Solicitor on Defects in the Offices, Practice, and system of Costs of the Equity Courts,” (published by Pickering.) Mr. Field is one of the most active and able of the body of solicitors, and, being in large practice, is well qualified to give information of the present defects, and to suggest the best means of removing them. He has taken a very extensive view of the subject, and gone into the details connected with each office:—the Six Clerks, the Masters, the Registrars, the Accountant General, the Examiners, including the Taxation of Costs, the Public Office, Lunacy, Affidavits, and, finally, the Equity Exchequer.

The work comprises introductory remarks on the incompleteness of past reforms; and the want of statistical information. He then treats of the *Six Clerks*, their emoluments—the effect of Lord Brougham’s Chancery Act, and the duties of the six clerks.

He describes the duties of the *Clerks in Court*; the real staff of office; and their emoluments. He then gives an analysis of Clerks in Courts’ bills, and relative proportions of the different classes of fees, with the estimated income of office from return of receipts for taxation, and similar estimates from number of bills, answers, and replications, of causes moving, and of solicitors in the profession; the charge of the clerk in Court against each cause; and the estimated incomes of principal Clerks in Court. He then examines the argument

of the Clerks in Court in defence of their office; the fee-simple nature of their business, and contends that their partial abolition would be objectionable. He estimates the expense of their official duties, and the saving by abolition; the value to the suitors of the saving; and the facility for raising a fund for compensation.

On the subject of the *Taxation of Costs*, he describes the importance of a better system, and the mischiefs of the present, and contends that taxing officers should have independent authority.

As to the *Masters’ Offices and Public Office*, he points out the delay and consequent expense of the present plan, and then adverts to copy-money, and the causes of delay—and discusses the advantages of public sittings, but admits that the greater part of business would be better done in private.

Regarding the *Public Office*, he considers it occasions much waste of time, expense, and inconvenience; and that the officer filing might administer the oath, and the present power of master’s extra should be extended to London. He states the present cost of the office to the suitors, and the estimate of saving by its abolition.

The *Master’s Chief Clerks*.—He states their duties, qualifications, and emoluments, and the effect of the salary system. He proposes giving them more assistance and authority. He states the progress of business, as shown by dates and returns of warrants, and the time taken in preparing reports; with suggestions for the better conduct of business, embracing all orders not on legal merits. A continuity of proceeding is also suggested; and the practice extended of giving the prosecution to defendants more easily.

In the *Registrar's Office* the delay arising from want of strength and hours of attendance is noticed; and suggestions are made for giving greater expedition, particularly in preparing minutes, decrees, and orders.

The expensive forms in the *Lunacy Office* are pointed out, and the time lost in obtaining minutes and orders.

As to the *Accountant-General's Office*, the subjects noticed are, the gratuities to clerks; the absence of principal clerks, from illness; the loss from non-investment of dividends, and of investment without order, and powers of attorney.

The *Clerks of Account* he considers occasion an expense to suitors, quite useless.

Under the head of *Examiner's Office*, the expense and inconvenience of country commissions; of taking examiners into the country; of compelling witnesses to come to town; and the time required to get appointments for witnesses, are treated of.

Then the *Affidavit Office*, and the taking copies, and copy-money are discussed.

On the important subject of *Salaries and Fees*, the author cites Lord Langdale's opinion, and contends that publicity and supervision are necessary on the abolition of fees; and that one receiver of fees should be appointed instead of requiring forty officers to keep accounts. The receiver's books would be an index to the state of business.

Regarding *Needless Proceedings*, Mr. Field shews that more bills were filed one hundred years ago than now; and that the forms and rules of practice have been improperly multiplied—the Slave Compensation Commission is instanced in contrast: there being of Chancery appeals 1 in 17; from the commissioners 1 in 2000, notwithstanding the intricate nature of causes before the commissioners; and he gives a table, shewing the progress of business and the number of appeals before commissioners.

Amongst the useless proceedings proposed to be altered or abolished are the following: orders of course—messenger's oath to answer—services to be by post—certificates of pleadings—affidavits of service—writs of injunction, &c.—Processes of contempt—subpoenas on amended bills—replications—production and proving wills—petitions on appeal—master's certificates—exceptions—orders not on points of law—confirming report—double petition for married women—assessing costs of motion in Court—bills of revivor—declaration on demurrer—allowing special case as at law.

A classification of suits is then made according to subject-matter, and to age; with

suits ended, proportion of, and whether compromised, decided, or discontinued.

Of the *Equity Exchequer*, Mr. Field discusses the inexpediency of its continuing an independent Court. He observes on the inducements to solicitors to practise in this Court, and states its disadvantages—want of appeal and uniformity of practice: the business of this Court compared with that of Chancery. He analyses an Exchequer Clerk in Court's Bill, and the Clerk in Court's Duties. The extensive use of distingas on stock is then noticed.

Mr. Field concludes with remarks regarding the supervision of practice, officers, and fees; the want of power in the Court of Chancery, as compared with Courts of Law; pointing out that the Master of the Rolls is the proper officer for this duty; and that there should be a septennial re-enactment of all the orders of Court.

It will thus be observed that the present writer has traversed the whole subject of Equity Reform, and discussed all its various departments. We shall for the present confine ourselves to extracting some of the prominent parts of Mr. Field's statements and remarks regarding the *Clerks in Court*.

The *Six Clerks*, Mr. Field disposes of very concisely, and we need only take the following passages:

"The Clerks in Court, though theoretically the underlings of the Six Clerks, have long been the only efficient part of the office, and they, very wisely and justly, take every opportunity of drawing a line between themselves and their titular superiors. The Six Clerks I put out of question at once. Since the last vacancy was left unfilled, and its profits transferred to the fee fund under the provisions of the Chancery Reg. Act of 1833, the doom of the office of six clerks may, I imagine, be considered as sealed, and its existence to depend on considerations of compensation only."

"The whole duties of these officers might well be done by their head clerk and his establishment. Though I have been almost daily in the Six Clerks' Office for a considerable part of the last twenty years, I never, to my knowledge, saw a six clerk; nor can I conceive of a solicitor, or clerk in Court, having any possible occasion to see one officially. I believe, indeed, that most of the clerks in Court do not know the six clerk to whom they are nominally attached, even by sight."

*The Clerks in Court* are an important body, and we select, in the first place, the Author's statement of their *duties*.

"Within living memory, the clerks in Court, formerly sixty or nearly in number, were the chief solicitors of the Court. For many years they have almost entirely ceased to solicit, and

now are almost exclusively confined to that business to which they are as yet entitled in monopoly. They call themselves officers of the Court. And so certainly they are, but in theory quite, and practically very nearly, in the same sense in which solicitors are officers of the Court. The records are not filed with them, but with the six clerk, and, I should think, there can be but little doubt that, originally, the fourpence per folio they pay the six clerk when there is an office copy made, was a payment to the six clerk for making the office copy; and that the rest of their charge to the suitor was an encroachment made in the course of time for their trouble in taking the six clerk's duty off his hands. If so, it would be precisely similar to the singular charge formerly made for entering on the rolls in the Queen's Bench, where the officer of the Court was paid 4d. a folio, because supposed nominally to enter the pleadings on the roll, and the attorney 4d. more, because supposed really to do it, and yet, in fact, it was rarely done at all. The records in the Six Clerks' Office, after they are filed, are entrusted by the six clerk to the Clerks in Court, for the purpose of copying and delivering the copies out to the parties. This duty is very analogous to that performed by different attorneys at law in the delivery of pleadings to each other. For this the Clerks in Court are paid 10d. a folio, of 90 words; 4d. of which sum they are understood to account for to the six clerk, and the rest they keep, paying the actual cost of copying, which is about 1d. a folio (or less, I believe). This fee forms by far the largest source of emolument to the clerks in Court.

"Before, however, examining into their emoluments, I will mention a few other of their duties or privileges, whichever they are to be called. They are supposed to make out the writs of the Court, though in fact these are made out by their agents, who are no more officers of the Court than an attorney's clerk is an officer of a Common Law Court. It is hardly accurate to say that they issue the writs, as, nominally, all these writs are passed under the great seal; and doubtless at some period, as is still the case at law, the officers whose duty it was to impose the seal, and who receive fees for sealing, saw that the writs were accurate. This part of a Clerk in Court's duty is precisely similar to that performed by attorneys at common law.

"The Clerks in Court sign consents to petitions and other matters requiring consents. At common law, this is done by attorneys, and without the slightest practical inconvenience I ever heard of, though the clerks in Court consider it a great advantage to the suitor of this Court that they should do it.

"They receive all services of notice and warrants, and then send the notices on by porters, or by post, to the respective solicitors. Services in this way, on the Clerks in Court, are all made in one room, which practically, no doubt is a great convenience; and until service by post shall be allowed, as I trust it

will, a change will be troublesome to solicitors. But as a large number of these notices are at present forwarded by the Clerks in Court by post, there would be no impropriety in directing that that mode of service should be sufficient.<sup>a</sup> At law, services have to be made at the attorney's office, if within a limited distance (two miles of London and Westminster). This necessarily occasions much trouble. This practice was settled before there was a post-office, or probably it never would have arisen. The increase of letters by the alteration would not be inconsiderable, and a saving to suitors might be effected also.

"The Clerks in Court also keep books, in which, for their own and the solicitors' convenience, they enter the names of parties, the dates of filing pleadings, and the names of the other Clerks in Court engaged. This, like all their other proceedings, is a book of no authority. If a certificate of pleadings<sup>b</sup> is wanted, they are obliged to have recourse to the six clerk. It is, in fact, such a book as every solicitor must keep, if he mean to do his business properly; but it contains very little of what the solicitor's book would show. At law, attorneys get on very well without such a semi-public book to refer to.

"The clerks in Court also tax costs. Theoretically, they are supposed merely to attend the masters in doing this, and to act as solicitors about it, the bills being originally considered as their own bills: but of late years, they have taxed the bills, with the exception of disputed items, themselves. On all points on which the solicitor is dissatisfied, however, he may, and constantly does, go to the Master. For this taxation, every Clerk in Court, for each party in the cause interested in the fund, whether he attends to tax or not—and, practically, more than one does not necessarily attend—is paid fees according to the length of the bill, each of the solicitors being allowed a fee for his attendance precisely equal to that of the Clerk in Court. This duty is the important duty of the office; and notwithstanding all that has been said against it, I conscientiously believe that it is rather under than over-paid by the fees for it, that it is done with perfect impartiality, and that the Clerks in Court, in extensive practice, do it (except from defects inherent to their subordinate position)

<sup>a</sup> The objection to a service by post seems to me to be a mere legal prejudice; except, at any rate, as to such services as are to operate in their next step directly on the person or property of the party affected. The notice of dishonour of a bill of exchange, which is good by post, is of as great importance as almost any solicitor's notice which is served,—of far greater than the mass of notices served through the Six Clerks' Office. A mode of notice which the common sense and practice of men has countenanced for so many years, may surely be adopted by the law, though somewhat counter to the old solemnities in which it delights.

with great accuracy, and also with great justice as to the result, so far as justice can be measured by the strict application of their rules."

Having observed upon the duties of the Six Clerks' Office, Mr. Field next considers what is its real staff.

"There are at present, I believe, twenty-eight clerks in Court. But there are not more than six or seven in any extent of practice. I do not know more than eight or ten by sight. And certainly, if only one clerk in Court were required to attend a taxation, which, if he were taxing officer would be the case, four could do this part of the work of the office, except perhaps for six weeks before the long vacation; and then, if paid by fees, they would, I have no doubt, get through it, as the taxations taken then are not of a hostile nature. There are only two agents to the clerks in Court in any very extensive practice; and one of these (a gentleman whose accuracy and activity are well known) acts for four or five clerks in Court; so as really, with an efficient assistant, to do the filing, cause-book keeping, issuing of writs, handing over of notices, making out of Clerk in Court's bills, and all the other work, except taxation, of a very considerable part of the office. Even allowing the business of this office to go on, on its present principle, six Clerks in Court, and three agents, with assistants and writers under them who would be paid by the 1d. a folio for the copies made, and by the fees paid by solicitors for carrying round warrants after office hours (a fee never spoken of, but which must bring in some good portion of pay to these under-officers), would, I should think, well perform all the duties of the office. If I spoke my entire mind, I should say a smaller staff would do."

Mr. Field next proceeds to the *emoluments* of the Clerks in Court.

"The reports and returns as to this office afford a strong instance of the want of statistical information. The individual fees, and the profit on each individual fee, have been inquired about by committees and commissioners, and published over and over again; we have been told of the 6s. 8d. term-fees, and the 7s. 4d. filing, and the 10d. a folio; but there seems to have been a delicate backwardness on the part of all the inquirers to ask what was the total revenue produced to the office by each fee, and in what proportion the business was divided among the several Clerks in Court. From this, had it been asked, it would have appeared how many working men there were in the office, and what were their annual emoluments. If the emoluments of these officers are to be continued to them in the character of fees for work done, and if they are also to remain entitled to a monopoly of that work, this is the material question; 6s. 8d. a term or 10d. a folio will be an under or over payment, just in proportion to the quantity of causes moving or folios copied in the course of each year. To obtain the data requisite

fully to judge of these points, we want a complete analysed return from each Clerk in Court separately, and not a return from the whole office jointly.

"Such a document has been moved for more than once, but as yet no return of the income of the Six Clerks' Office has ever, as far as I know, been published. We are therefore, driven to less certain sources of information. These sources are principally the half-yearly bills delivered by the Clerks in Court to the solicitors, and these have been used.

"By a tolerably careful analysis of Clerks in Court's bills for fifteen half years, nearly consecutive, the earliest being in 1832, altogether amounting to 3600*l.*, I get the following results:

"I find that the amount received for taxation is generally less than one-eleventh of the whole bill.

"That the amount received for office copies is very nearly seven-twelfths of the whole bill.

"It seems as far as this mode of averaging can be relied on, that every thousand pounds paid to the clerks in Court may be divided as follows:

	£
Term fees .....	200
Taxation .....	90
Office copies .....	583
Writs .....	32
Filing pleadings and replications .....	30
Signing consents .....	16
Certificates of pleadings and setting down causes .....	9
Rules .....	5
Appearances .....	30
Eurolments .....	5
	<hr/>
	£1000

"From a return made to the House of Commons, and printed February 1st, 1832, it appears that the total amount received for taxation was, in

	£	s.	d.
1829 .....	5753	13	4
1830 .....	5325	13	4
1831 .....	6021	6	8

an average of 5700*l.* a-year, which in the proportion above of 90 to 1000, gives 63,33*l.* a-year as the gross. To reduce this to a net income for the clerks in Court, it must be distributed as above, and that would give the total annual receipts of the office for

	£
Term fees .....	12,666
Taxing .....	5,700
Office copies .....	36,923
Writs .....	2,027
Filing pleadings and replications .....	1,900
Signing consents .....	1,013
Certificates .....	570
Rules .....	317
Appearances .....	1,900
Eurolments .....	317
	<hr/>
	£63,333

We must then deduct four-tenths for the six clerk's proportion of the sum for office copies . . . . . £ 14,769

Also for payments to the Lord Chancellor's officers on writs, and to other officers on other proceedings, which I feel sure will be well covered by . . . . . £ 1,000

Say . . . £ 15,769

Leaving to support the clerks in Court, sworn clerks, and waiting clerks, and their officers, at least, 47,564*l.* per annum.

After various details to establish the accuracy of these calculations, Mr. Field proceeds—

"Having ascertained as far as the materials will enable me what are the emoluments of the office, we come to the question, "Why should this office be continued?" It was formerly in keeping with the general principles of the Courts, to have certain privileged attorneys practising therein; but, one by one, all other monopolies of this kind have dropped away, leaving only this enormous one. A rule which requires every suitor to employ a particular privileged attorney to do certain particular detached parts of his business when thereunto moved by the suitor's own confidential adviser, not otherwise, and which obliges him to pay this particular privileged attorney for such work, while, of course, in some shape, the confidential adviser must be paid for looking after such work, and for setting the privileged attorney in motion, is certainly much against our first notions; but still, it may be advantageous for the suitor. But if it be, it hardly need be made compulsory. If the Clerk in Court say that his office should be continued for the protection of the Court, he gives up his whole case. This is all that is contended for against him. Nobody desires that in so far as the Court requires any of its operations to be performed by officers appointed by itself, and not by the nominees of the suitor, it should not have such officers. So far as duties of this kind have to be discharged, let the officers for the purpose be really and peculiarly appointed by the Court, and be placed on the same footing as all the other officers of the Court; but do not allow them to mix up the inconsistent characters of officers of the Court and solicitors—parties to check and parties to move. Let them keep either to the duty of advancing the simple individual interest of the client, or to that of protecting the general interests of justice, and of exacting compliance to the rules of the Court. \* \* \*

"If the office be abolished, as sooner or later it must be, then, for the purpose of executing the duties now performed by it, which would be continued, and such of those performed by the masters as relate to costs, (warrants certificates, &c.) the following staff would, I should think, amply suffice.

Head taxing officer at (say) ..	£2,000 a-year
Four more at .....	6,000
Assistants .....	600
Record keeper and enterer of appearances .....	1,000
Assistants .....	800
Sealer of writs (for additional duties) .....	800
	_____
	11,200
Add expense of making office copies at 1 <i>d.</i> a folio .....	3,700
	_____
	£14,900

"As the solicitors would have no additional trouble thrown on them by the altered mode of doing their business, I do not apprehend there need be any fees added for them; at any rate except as to writs. As to these, if they had all the Clerk in Court's present profit (the dedimus, however, should be abolished) it would only be 1,500*l.* a-year; and with reference to the question of saving upon the above calculation, this 1,500*l.* per annum may be set against the relief which will be given in the master's offices, by taking away taxation from them.

"Thus might a total saving to the suitors, to a very important extent, be produced by the reformation of the Six Clerks' Office; that is to say, after the immediate burden of compensation has been got rid of.

Taking the gross income of the Six Clerk's Office to be.....	£ 63,000
The expenses of conducting the business by officers newly constituted .....	14,900
Gives an estimated saving of .....	£48,100

## REMOVAL OF THE COURTS FROM WESTMINSTER.

It is rumoured that some alteration or addition is in contemplation regarding the design of the New Houses of Parliament, and therefore a convenient opportunity is presented of re-considering the site of the Courts at Westminster Hall. We have always contended for their removal to the Rolls Estate, now belonging to the Crown, and readily available for the purposes required. We understand that Government is about to build, on part of the Rolls Estate, new offices for the Courts of Queen's Bench and Exchequer, similar to those lately provided for the Common Pleas, adjoining the Judges' Chambers. A Court is also required for the Court of Review, and very soon, we hope and expect, two other Courts will be necessary for the new Equity Judges. All these objects might be combined with the entire removal of the Courts from Westminster. We have frequently gone over the

grounds in favour of such removal to the neighbourhood of the Inns of Court, and now avail ourselves of the statements contained in a pamphlet, called "Westminster Hall Courts," containing "Facts for the consideration of Parliament before the final adoption of a plan perpetuating the Courts of Law on a site injurious and costly to the Suitor" (published by Hatchard & Son).

The writer shews, 1st. That the situation of the present Courts is inconvenient to the profession, and injurious and costly to the suitor;

2dly. Inconvenient and costly to the public; and

3dly. That the present Courts are irredeemably inconvenient in themselves.

We believe that many of the Judges are opposed to the removal. With respect to the *Bar*, the Author says,—

"The members of the bar are materially influenced in opinion in this matter, according to the description and quality of their business. To consider first, those of the *common-law bar*. The leaders here will be least desirous of any change; a few of them never visit their chambers, but pass their time between Westminster Hall and their private residences, which are in some instances in the immediate neighbourhood; some, too, are in parliament, and they find it agreeable to leave their courts now and then at certain intervals, and look into the committee-rooms; or, at the rising of the courts, to walk thence into the house, and secure their seats for the evening. These are slight personal gratifications, not in any way essential to the public service, and therefore not to be interposed in the consideration of this question.

"The next class at the common-law bar, (for we exclude for the present the consideration of those attending the House of Lords, and parliamentary committees), are those barristers in full practice, who have no leisure, whose whole time is occupied with court and chamber business;—these must be in and about the courts to take part in, or be prepared for, the several cases in which they are retained. And here begins the disadvantage of the courts being a mile and a half from the practitioner's chambers. It often happens, that the barrister can see a clear interval of two or three hours before his presence in court will be needed. How valuable this opportunity, could he pass it in the quiet of his own chambers, working up his cases with his own books, and writing on questions submitted for his opinion; his clerk meanwhile watching the progress of the courts, to announce to him the necessity of his attendance. At present, these precious intervals are spent in the bar news-room, in pacing the great hall, or else in a corner of the court, or the passages about it: in these places, and under these disadvantages, briefs and cases, involving life, character, and property, are attempted to be studied: indeed

the press of business requires it, and it is the best the barrister can do. The practitioner who is less engaged, prefers to lose these intervals, and to reserve his papers for an undisturbed perusal at night; but were the courts near his chambers, he might so economize his time, as to be able to devote his evening to literary studies, or social relaxation. Again, many men at this bar, who have but little practice, engage in professional or literary works, and their time is thus of essential value to them. When these get a brief, however trifling, it receives their prompt and anxious attention; but before they can get their opportunity of addressing the court, two, three, or more days may elapse, and all that time be wasted, not only without remuneration, but positively at a loss of money, and this, again, owing only to the distance of the courts from chambers.

"There is yet another class of men at this bar, namely, those who have no practice at all, or collateral occupation of another kind;—these will perhaps see no necessity for the removal of the courts; the walk to Westminster is agreeable, and the court a lounge, admitting of an easy adjournment to the clubs.

"The practitioners at the *Equity bar* are more sensible of the advantages of courts contiguous to their chambers than those of the other bar, inasmuch as they have experience both ways. As to the leaders, who do not draw the pleadings, they may be personally as indifferent upon the question as the common-law leaders, or they may find their convenience in Westminster Hall; but to those behind the bar, whose chamber business is the most laborious portion of their practice, and who are yet required to be in frequent attendance in court,—to these, the sitting of the courts in term time at Westminster is the most grievous inconvenience, and is, moreover, the cause of great delay to the suitors of the court. Solicitors well know they can get no draft pleadings from the men of most practice during the four terms. For thirteen weeks, therefore, that is, for one-third of the legal year, a great bulk of pleadings is totally suspended, whilst, during this very time, the practitioners lose hours and hours in hanging about the courts. The time thus uselessly spent in the close atmosphere of the court, they have to make up by late night-work in chambers. Many of the younger men at this bar, in addition to drawing chancery pleadings, (their chief employment), practise also as conveyancers; and these young men constantly lose day after day in Westminster Hall on a guinea brief, whilst urgent papers are lying idly on their tables in Lincoln's Inn.

"It is undeniable, that but for the cessation of the evils here complained of during vacation intervals, (when the Equity Courts, to consult the convenience of the profession, sit in Lincoln's Inn and Chancery Lane), the practitioners of these courts could not get through the business of the suitors; and under existing regulations, one of the greatest delays experienced in Chancery suits, is the long period which counsel necessarily take to advise on and draw the pleadings."

With respect to the *Attorneys*, the case is thus represented :

"The law offices, the chambers of the judges and the masters in Chancery, the chambers of all the barristers, are, it need scarcely be said, in or near to the Inns of Court; and where are the attorneys? To answer this question, the map of London has been divided into districts, and the number of attorneys resident in each district has been carefully ascertained by means of the Law List for 1839, and thereby the proportion of attorneys resident in the law quarter, and remote from it, has been exactly obtained.

"The following are the limits comprised in the several districts:—

"No. 1. *The law district*: bounded by Bridge Street Blackfriars, Farringdon Street, Holborn Hill, including Ely Place, Hatton Garden, and Furnival's Inn, Gray's Inn Lane to Guilford Street, the latter street, Keppel Street, Store Street, thence down Tottenham Court Road in a line through St. Paul's Church Covent Garden, to Cecil Street, Strand: the river forming the southern boundary.

"No. 2. The City, eastward of Blackfriars and Farringdon Street.

"No. 3. The outside district, northwards and eastwards of Nos. 1 and 2.

"No. 4. *The Westminster district*: The space bounded by the river from Vauxhall Bridge to Northumberland House, Trafalgar Square, including its neighbourhood, the Haymarket, Piccadilly, Grosvenor Place, and Vauxhall Bridge Road.

"No. 5. The outside Westminster district, including all the Middlesex side of the river not comprised in the foregoing divisions.

"No. 6. The town on the Surrey side of the river.

"It will be seen that the attorneys in the districts Nos. 1, 2, and 3, and, by consequence, the clients of those attorneys are disadvantaged by the remoteness of the courts from their districts; and, on the other hand, the attorneys resident in Nos. 4 and 5, and the clients of those attorneys, are benefitted by the present site. The district No. 6 may be treated as neutral. The following is the result of the analysis. The proctors are excluded. On the principle before explained, the country attorneys are placed within the districts in which their agents reside.

No. 1.	Town attorneys .....	1,365
	Country do .....	5,231
	Total in the Law District.....	6,596
No. 2.	Town attorneys .....	803
	Country do .....	1,321
		2,124
No. 3.	Town attorneys .....	77
	Country do .....	36
		113
	The proportion of attorneys prejudiced by the present site ..	8,333

No. 4.	Town attorneys .....	90
	Country do .....	34
	Total in Westminster district.....	124
No. 5.	Town attorneys .....	254
	Country do .....	126
		380
	The proportion of attorneys benefitted by the present site .....	504
No. 6.	Town attorneys .....	71
	Country do .....	13
	The proportion of neutrals .....	84

The facts collected by the Author of the pamphlet before us, are of great importance in determining the question. He has also added a map, shewing the law and other districts to which he refers; and it is obvious that not only three-fourths of the profession are congregated in that district, but that the law district is really the very centre of the metropolis; and consequently the site which would be most convenient to the great body of both branches of the profession, would also be most convenient to the public at large.

#### INSTITUTION OF LAW LECTURES IN DUBLIN.

WHATEVER difference of opinion there may be, regarding the rank which ought to be given to *lectures* as one of the means of legal instruction, we presume there can be no doubt that they are highly useful to the larger class of students. There may be some fortunate individuals, who have a natural taste for the study of the law, (and we think there are attractions connected with it which no other profession affords), but generally speaking, "all appliances and means to boot," are not too many to aid and urge on the legal student in his progress even to a moderate degree of eminence. He who becomes an eminent lawyer must possess, not only many natural endowments, but great industry and extensive experience.

Besides the unavoidable difficulty of mastering the law in any of its principal departments,—to say nothing of compassing the whole!—the students and practitioners of the present day labour under the additional difficulty of studying a system which has undergone many extensive changes of a recent date, the exact effect of which is not settled by the courts, and which is every year visited with further alterations;

so that, although our modern law works are less repulsive than the old, they are much more numerous and perplexing. The larger part of them, also, are designed for practical purposes, and not for elementary instruction. It is manifest, therefore, that a well considered course of lectures cannot fail to assist the student in his progress. In London, the plan appears to be very well arranged. At the King's College, and University College, the lectures are generally of an elementary character, suited to the student on his first entering on his career; whilst at the Incorporated Law Society, the several courses of lectures on Conveyancing, Equity and Bankruptcy, Common Law, and Criminal Law, are evidently designed for practical application.

We are glad to find that an institution has been established at Dublin, to supply the want which appears there to have been sensibly felt, of a preparatory course of legal education. Both branches of the Irish profession are largely indebted to the perseverance of Mr. Tristram Kennedy, and to the other members of the Irish Bar, who have formed "The Dublin Law Institute." We observe also, that the plan has received the approval of the Dignitaries of the Irish Bar, and that there are four courses of lectures now in progress.

In the *Common Law* department, Joseph Nupier, Esq. is the Lecturer.

The class-books for the first session will consist of the 3rd vol. of Blackstone's *Commentaries*, 20th and 21st chapters. Stephen on *Pleading*, with the *references*. Selections from Smith's *Leading Cases*.

In addition to the weekly lecture, the professor will occasionally deliver a written lecture on questions of general interest, connected with his department, and in which the comparative merit of text-books, and the authority of reports, will be discussed; as also, the course of reading and study most likely to be profitable. Such occasional lectures will not be accompanied by any examination of the students, or others who may attend. A separate course of lectures will be delivered on Common Law, Civil Bill Proceedings, and the Law of *Nisi Prius*. The first will comprise the following subjects:—Indictable offences of the more usual occurrence at the assizes and sessions. General outline of criminal pleadings. Leading points of evidence. Conduct of a criminal trial. The second will relate to Civil Bill Jurisdiction. Course of proceedings. Appeals. The third will involve the consideration of the preparing of proofs, the application of evidence, the conduct of the case.

The lectures on *Nisi Prius* Law will be delivered by James Whiteside, Esq.

The examination on the Wednesday evening,

being conducted through the medium of printed questions and written answers, with fictitious signatures, it may be observed, that persons may attend without being in any way subjected to any species of examination. The answering of the questions is intended to be voluntary, and to be extended to all or any of the questions at the disposition of the students.

In the *Equity* department, Echlin Molynæur, Esq., is the lecturer. His course will embrace the several subjects involving the jurisdiction of Courts of Equity; as account—fraud—mistake—accident—administration of the assets of deceased persons—confusion of boundaries—partition—trusts—specific performance—interpleader, *quia timet*, and possessory bills, and those for the purpose of discovery, and to perpetuate testimony—petitions for receivers on judgments, under the 5 & 6 W. 4, together with the exclusive jurisdiction of the Court of Chancery in infancy, bankruptcy, and lunacy; and, as incident to the foregoing course, the Lecturer will investigate the doctrine of equity pleading, so far as relates to the frame of the prayer for relief, and the selection of the proper parties to the suit. A concurrent course of lectures will be delivered on the practice and forms of pleading peculiar to Courts of Equity. In this latter course the suit in equity will be traced through its successive stages from the commencement to the conclusion; and the various interlocutory orders and proceedings incident to its progress severally noticed; and at the same time the differences existing between the practice of the Courts of Chancery in England and Ireland, and between the practice of both of those Courts and that of the Court of Exchequer in Ireland, will be pointed out. The order of preparatory reading for each lecture will be suggested at the meeting of the class next immediately preceding. The twenty-seventh chapter of the third book of Blackstone's *Commentaries*, and the introduction to Cooper's *Treatise on Pleading in Equity*, may be read with advantage by the students.

In the department of the *Law of Property and Conveyancing*, James J. Hardey, Esq. is the Lecturer. The class-books for the first session will consist of the following:—1st. Blackstone's *Commentaries*, chaps. 15, 16, 17, and 18. 2nd. Blackstone's *Commentaries*, (except the 22d and 28th chapters, and except such parts of the other chapters as relate exclusively to copyholds.) 3d. Blackstone's *Commentaries*, chap. 2, and from the 10th to the 16th chaps., both inclusive. 4th. Blackstone's *Commentaries*, chaps. 29 and 33. Watkins on *Conveyancing*, Selected parts of Sheppard's *Touchstone*. The course will consist of—1st. the *Law of Property*.—2d. *Practical Conveyancing*; or, the preparation of the drafts of deeds, and other instruments relative to the transfer or alienation of every species of property. The latter subject will not, however, be entered upon until some progress shall have been made in the former. Besides

these weekly lectures, the professor in this department will, at times suited to the lectures of the other professors, deliver a written lecture on subjects of general interest connected with this department.

In addition to the above, (but forming part of the same course), a limited number of lectures will also be delivered, during the session, by Richard Tudor, Esq., on the law relating to Wills and to Descents; the time of delivering which will be arranged so as not to interfere with the regular lectures of this or any other of the classes.

In addition to these lectures, a course has been commenced on *Medical Jurisprudence*, by Dr. Thomas Brady. This course will be divided into three parts.

The first part will comprise a general view of the animal economy, and an account of the structure, functions, relations, and some of the diseases of the chief organs of the human body, the knowledge of which is absolutely necessary in order to understand the nature and value of medical evidence.

In the second part the medical evidence in criminal cases, or offences against the person, as murder—poisoning—assaults—rape—procuring abortion, &c. &c., will be examined and fully explained.

And in the third part the medical evidence in cases of divorce—legitimacy—life insurance—public nuisances—mental alienation, &c.

## LEGAL CHRONOLOGY FOR 1839.

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### January.

The Hon. Thomas Erskine, Chief Judge of the Court of Review, was appointed a Judge of the Court of Common Pleas, on the vacancy occasioned by the death of the late Mr. Justice Park.

Several persons convicted of treason in Canada, were brought before the Court of Queen's Bench under a Habeas Corpus, but were remanded: the sentence of the Colonial Court being confirmed, see 17 L. O. 234.

New forms of Writs of Execution were ordered by the Common Law Courts under the Arrest Abolition Act.

Forty-three barristers were called in Hilary Term.

At the examination of articled clerks, 94 candidates were passed, and 3 only postponed.

### February.

On the death of Mr. Stirling, the late Coroner for Middlesex, a contest took place for the vacant office. Several solicitors came forward, but all successively retired except Mr. Adey. In consequence of this division of interest amongst the lawyers, and want of energy, a medical Coroner was elected.

- The following Bills were brought in:—  
 For improving the Civil and Criminal Jurisdiction of County Courts.  
 For keeping and authenticating Non-Parochial Registers : Lord John Russell.  
 To provide a General Form of Affirmation in lieu of Oaths : Mr. Hawes.  
 For the better Ordering of Prisons.  
 To regulate the summary jurisdiction of Magistrates : Lord John Russell.  
 For improving the Police of the Metropolis : Mr. F. Maule.  
 For the better Protection of Purchasers against Judgments : Sir E. Sugden.  
 To amend the Law of Copyright : Mr. Serjeant Talfourd.  
 For the Enfranchisement of Copyholds : Mr. Jas. Stewart.  
 For the Registration of Parliamentary Electors : The Attorney-General.  
 To amend the Jurisdiction for the Trial of Election Petitions : Sir R. Peel.  
 For establishing Courts in various places for the Recovery of Small Debts.  
 For amending the Law of Costs : Sir F. Pollock.  
 To amend the Laws relating to Highways : Mr. Barneby.  
 To alter and amend the Laws relating to Sewers : Mr. Christopher.  
 For the more effectual Protection of Inn-keepers : Capt. Pechell.  
 To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain cases : Mr. Parkington.  
 For securing the Benefit of Inventions in the Arts and Manufactures : Mr. Mackinnon.  
 For extending the Copyright in Designs for Printing Woven Fabrics : Mr. P. Thomson.  
 Mr. Hayter, Mr. Stuart, Mr. R. V. Richards, Mr. Girdlestone, and Mr. G. Richards were created Queen's Counsel.

### March.

A favorable report was made by the Select Committee of the House of Commons as to the reduction of postage.

A new order was made in Chancery relating to the Power of Receivers under the Tithe Commutation Act, see 17 L. O. 395.

Mr. Duckworth was appointed a Master in Chancery in place of Mr. Cross, resigned.

The following Bills were brought in this month:—

- For Regulating the Proceedings in Borough Courts : The Lord Chancellor.  
 For the Better Ordering of Prisons : Lord John Russell.  
 To Abolish Grand Juries : Mr. Prynne.  
 To Establish Metropolitan Police Courts (in lieu of Police Offices.)  
 To Improve the Practice and Proceedings in the Court of Pleas at Durham : Mr. Harland.  
 For Extending the Qualification of Voters : Sir H. Fleetwood.  
 To render the Owners of Small Tenements liable for Rates : Mr. R. Gordon.

*April.*

The Criminal Law Commissioners made their Fourth Report. See Appendix to 17 L. O.

Examiners of Persons applying to be admitted as Attorneys and Solicitors were appointed for one year. See 17 L. O. 487.

The following Bills were introduced :—

To amend the Imprisonment for Debt Act :

The Attorney General.

For Regulating the Expences of High Sheriffs : Col. Davies.

For Suppressing Seditious Societies.

*May.*

The number of barristers called in Easter Term was 50.

105 candidates for the Roll of Attorneys were passed, and 5 were deferred, their answers not being deemed satisfactory.

The Lord Chancellor and the other ministers of her Majesty resigned their offices. Lord Lyndhurst was named as the new Chancellor, but the other legal arrangements were not completed when Sir R. Peel felt obliged to withdraw, and the former Cabinet resumed office.

The following Bills were brought into Parliament :—

To amend the Law relating to the Custody of Infants : Mr. Serjeant Talfourd.

To enable the Judges to take Inquisitions of the Exchequer.

To prevent Persons from losing their Votes by removal after Registration : Mr. Gibson.

To continue the Act relating to Usury on Bills of Exchange.

New Orders in Chancery were made relating to the Practice and Proceedings in that Court, and Writs of Execution. See 18 L. O. 60.

*June.*

The royal assent was given on the 4th inst. to the following Bills :—

Purchaser's Protection.

Seditious Societies.

Designs Copyright Extension.

New Orders were made in the Court of Exchequer in Equity, relating to the Practice and the Forms of Writs. See 18 L. O. 120.

There were 42 barristers called in Trinity Term.

At the examination of articled clerks 108 attended : the answers of 5 were deemed unsatisfactory, the rest were passed.

The Bill for rendering the Owners of Small Tenements liable for Rates was negatived.

Mr. Le Blanc, the Senior Master of the Queen's Bench retired, and Mr. Turner was appointed to fill the vacancy.

The royal assent was given on the 14th June to the following Bills :—

Designs Copyright.

Durham Court of Pleas.

The following Bills were brought in :—

To amend the Practice of the Stannary Courts.

For establishing a Court of Appeal from the Revising Barristers : Mr. C. Buller.

To Regulate the Course of Proceedings in the Common Pleas, as to hearing Counsel in Term Time.

To amend the Law of Patents for Inventions.

To Indemnify Persons as Clerks to Attorneys, &c.

To continue Turnpike Acts.

*July.*

The royal assent was given on the 4th inst. to the Exchequer of Pleas Inquisition Bill, and on the 19th to the Bankruptcy Protection and Borough Court Proceedings Bills.

Mr. Martin, one of the Masters in Chancery, having resigned, Sir Wm. Horne was appointed in his stead.

New Bills were introduced :—

To amend the Tithes Commutation Act.

To declare what Prisoners shall be tried at Quarter Sessions ; and

To Reduce the Postage Duties.

The royal assent was given on the 29th to the following Bills :—

Annual Indemnity.

Usury on Bills of Exchange.

Turnpike Acts Continuance.

Several Small Debt Courts.

*August.*

The following Bills were introduced :—

For Regulating the High Court of Admiralty.

For holding Assize Courts.

For extending the Liability to Debts of Real Estates.

For the Administration of Justice in certain parts of Counties.

For the better Regulation of Attorneys and Solicitors in Ireland.

For Incorporating the King's Inns, Dublin, and Regulating the Profession of the Law in Ireland.

The Copyholds Enfranchisement Bill, which had passed the House of Commons, was postponed by the Lords, 39 being against, and 27 for the Bill.

Royal assents were given on the 17th to the following Bills :—

Election Petitions Trial

Postage Duties.

Prisons Regulation

Stannary Courts.

Custody of Infants.

Imprisonment for Debt.

Metropolis Police.

Tithes Commutation.

Sheriff's Exemption.

Real Estate Liability.

Highways.

Turnpikes.

London City Police.

On the 24th the following Bills received the royal assent :—

Metropolitan Police Courts.

Holding Assize Courts.

Highway Rates.

Patents for Inventions.

Joint Stock Banks.

Several Small Debt Courts.

On the 26th the following Bills received the royal assent :—

Administration of Justice in parts of Counties.

Poor Law Commission Continuance.

Poor Rates Collection.

Bastardy.

On the last day of the Session, the 27th, County and District Constables.

### November.

The vacancy in the Common Pleas, occasioned by the death of Mr. Justice Vaughan, was filled by the removal of Mr. Baron Maule from the Exchequer to the Common Pleas, and Sir R. M. Rolfe, the Solicitor General, was created a Baron of the Exchequer.

Mr. Serjeant Wilde was appointed Solicitor General.

The several Inns of Court called 42 Barristers during this Term.

The number of candidates for the Roll of Attorneys who attended the examination was 125, of these 111 were passed, and 14 postponed.

The total of Barristers called during the year was 177, and of Attorneys 413.

During the Term, Mr. Serjeant Wilde claimed on the part of the Serjeants of the Court of Common Pleas an exclusive Right of Pre-audience. On the last day of Term, the Chief Justice informed the Bar, that next Term the Court would call on some gentleman of the coif to move, passing over some other gentlemen not of that degree, who might then shew cause.

### December.

The Reduction of Postage Act came into practical operation on the 5th.

The special Commission for the Trial of the Prisoners at Monmouth, for High Treason, was opened on the 10th, and adjourned to the 31st. See the charge of the Chief Justice, 19 L. O. 153.

A Commission was issued for inquiring into the Bankruptcy and Insolvency Courts. See 19 L. O. 99.

One of the unsuccessful candidates in the last Term appealed to the Judges, and a hearing took place on the 17th inst., when the decision of the examiners was confirmed. See 19 L. O. 136.

## REPORT OF THE TITHE COMMISSIONERS.

The following is the report made to the Secretary of State for the Home Department of the progress of the Commutation of Tithes in England and Wales during the past year.

"We have now in the office 4,993 agreements, of which 3,980 have been confirmed;

and of these 1,916 have been received, and 1,990 confirmed during the year 1839.

"We have in the office 414 awards, of which 178 have been confirmed; of these 357 have been received, and 172 confirmed during the year 1839.

"We believe that rent charges have now been fixed in about 5.12ths of the tithe districts of the country (exclusive of those parishes or places the tithes of which have been commuted by local acts of parliament.)

"We have received 2,184 apportionments, of which 1,157 have been confirmed; of these 1,251 have been received, and 933 confirmed during the year 1839, and 823 have been received during the last six months of that year.

"The progress of voluntary agreements has been considerably accelerated during the past year; that of apportionments very much more so. More time is usually consumed by this last process than the six months originally contemplated by the legislature. Allowing, however, for this fact, the receipt of apportionments is at length following up the receipt of agreements with tolerable regularity.

"We have to repeat this year the satisfaction we have before expressed at the amicable manner in which the apportionments have been completed. This part of the commutation, it was feared, would be the most beset by strife and difficulties. The event has proved such fears groundless.

"Angry appeals are the very rare exception; contented acquiescence is the general rule.

"This result has unquestionably been principally produced by sufficient time having been allowed for the completion of the process by valuers, named by the land owners themselves, possessing, and as the event proves, deservedly, their confidence.

"But if this full allowance of time has produced harmony, it has also produced delays, which have not been without their inconveniences.

"To explain more fully the cause and effects of these delays, we append to this report a circular of our own, issued in August 1838, which we also appended to our last report.

"We very earnestly wish to draw the attention of both tithe payers and tithe owners to the cautions and advice contained in it.

"While the business of apportionment remains in the hands of the land owners, the policy and provisions of the tithe act leave the entire control over that process to them, and give us no such control at all.

"We regret that the tithe owners as a body seem very partially aware of this fact. We continually receive from them requests and complaints, which show that they believe it to be in our power to regulate and direct the movements of the apportioners.

"It is important they should understand more generally that our power over this process only begins when we have resorted to the decided step of removing it altogether from the hands of the lands owners, and taking it

into our own; and when, for the first time, we ourselves select, instruct, and pay the persons who conduct it.

"On the expense, the inconvenience, and the wide irritation, which would follow our being generally called on to take this step, we have before dwelt.

"These considerations induce us the more anxiously to repeat our hope, that the parties will keep the probable duration of the process of apportionment steadily in view while making their own arrangements: that the tithe owners who have compositions will keep their right to them entire till after the completion of the apportionments, and that the land owners will make such stringent contracts with the apportioners and mappers as may effectually prevent any delays, not wholly inevitable.

"In all cases, however, in which wilful loitering with the apportionments can be proved we wish it to be understood that we shall, on a distinct statement and request from the tithe owners, feel bound to interfere at once.

"Legal doubts and difficulties as to the effect of the hop clauses have obstructed the commutation in some important districts. They are now sufficiently removed to enable us to work those clauses with comparative ease and confidence.

"During the progress of this work, however, it has appeared to us that a slight further simplification of those clauses might be practicable and useful. We do not think fresh legislation necessary or advisable for this object alone: but should an opportunity occur, we think it may be worth the attention of the legislature.

"As the tithe acts at present stand, though we have power to declare that the rent charges shall begin before the confirmation of the apportionment, we have no power to stop the perception of tithe in kind before the apportionment is confirmed.

"The hardship of allowing tithe in kind to be collected, after a rent charge has been actually declared, has been strongly pressed on us. If, however, a power should be vested in us of extinguishing tithe before the confirmation of appointments, such a power must obviously be accompanied by others which would secure the receipt by the tithe owner of an un-apportioned rent charge.

"Unless the receipt of voluntary agreements should appear likely to fall permanently and considerably short of the average of the last year, we do not think it expedient to extend our compulsory proceedings beyond the four classes of cases enumerated in the annexed circular."

(Signed)

W. BLAMIRE.  
T. W. BULLER.  
R. JONES."

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## BARRISTERS CALLED.

*Hilary Term, 1840.*

### LINCOLN'S INN.

27th Jan.

Henry Vaughan.  
Edward Richard Golightly.  
Timothy Coleman Johnson.  
Frederick Prideaux.  
William Adam Loch.  
Travers Twiss.  
Charles Jasper Selwyn

30th Jan.

Frederic Hill.  
John Lucena Ross Kitte  
Gordon Whitbread.  
Thomas Plumptre Methuen.  
William Stevens Richardson.  
Edward Thornton.

### INNER TEMPLE.

31st Jan.

George Alexander Hoskins.  
John Kirkpatrick.  
James Gordon Hay.  
John Coke Fowler.

### MIDDLE TEMPLE.

17th Jan.

Frederic Albert Winsor.

31st Jan.

James Little.  
William Frederic Lewis.  
George Whitlock Nicholl.  
William Faulkner Browell.  
Charles Swaine Wright.  
Richard Thomas Maddison.  
George Arthur Lister.  
George John Holmes.  
Samuel Barrow.  
Edmund Sawyer.  
Charles Zachary Macaulay.

### GRAY'S INN.

29th Jan.

George Tyler.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From January 21st to February 21st, 1840, both inclusive, with dates when gazetted.*

Ellison, Richard, Thickhill near Bawtry, York.  
Jan. 21.

Rice, Henry, Newport and Cowes, Isle of Wight.  
Jan. 31.

Beeching, Alfred John, Tunbridge Wells. Feb. 4.  
Day, George, St. Neots and Kimbolton, Huntingdon. Feb. 4.

Herbert, Henry, Leominster, Hereford. Feb. 4.

Bullmore, Henry Orlando, Falmouth. Feb. 7.

Latham, Wm., Melton Mowbray, Leicester.  
Feb. 11.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From January 21st to February 21st, 1840, both inclusive, with dates when gazetted.*

Smith, Thomas, and James Henry Dowling, Gloucester, Attorneys and Solicitors. Jan. 28.

Pearson, Charles, and Michael Eaton Wilkinson, [no Residence Gazetted.] Attorneys, Solicitors, and Parliamentary Agents. Feb. 18.

Webber, Robert, and Thomas Bland, Bedford Row, Attorneys and Solicitors. Feb. 21.  
Adams, John Fraucis, and Joseph Millard, Great Distaff Lane, London, Attorneys and Solicitors. Feb. 11.

## BANKRUPTCIES SUPERSEDED.

From January 21st to February 21st, 1840, both inclusive, with dates when gazetted.

Evans, Thomas, Bridgend, Glamorgan, Draper. Jan. 24.  
Hastings, Thomas, Birmingham, Brace Manufacturer. Jan. 24.  
James, Wm. Malinslee, Dawley, Salop, Coal Merchant. Jan. 28.  
Solomon, Philip, and Israel Jacobs, Manchester, Manchester Warehouseman. Jan. 28.  
Weakley, Robt., Devonport, Hotel Keeper, and Tavern Keeper. Jan. 28.  
Wallace, John, Belfast, Antrim, Ireland, Merchant. Feb. 7.  
Partridge, James Birch, Birmingham, Dealer in Birmingham and Sheffield Wares. Feb. 11.  
Edwards, William, Stankhill-house, Budbrooke, Warwick, and of Leamington Priors in the same County, and Thomas Henry Blackburn Venour, of Leamington Priors, Scriveners and Builders. Feb. 18.  
Woolcott, Geo., Brownlow Mews, Gray's Inn Lane, and of Doughty Street, Builder. Johnson, Off. Ass.; Thompson, & Co., Bucklersbury. Feb. 18.

## BANKRUPTS.

From January 21st to February 21st, 1840, both inclusive, with dates when gazetted.

Anderson, John Andrew, Greenwich, Kent, Boarding and Lodging House Keeper. Green, Off. Ass.; Braham, Chancery Lane. Jan. 24.  
Anstey, Joseph, Sheffield, York, Pearl Shell Dealer, and Pearl Button Manufacturer. Tattershall, Great James Street, Bedford Row; Binney, Sheffield. Jan. 28.  
Ashton, James, and William Crossley, Todmorden, and of Manchester, Lancaster, Cotton Spinners and Manufacturers. Johnson & Co., Temple; Heron & Co., Manchester. Jan. 28.  
Armour, William, Manchester, Fancy Drill and Nankeen Manufacturer; Kaye & Co., Manchester. Feb. 7.  
Appleton, Raynes Waite, Liverpool, Merchant. Lowe & Co., Southampton Buildings; North & Co., Liverpool. Feb. 11.  
Atkinson, John, Manchester, Cattle Dealer and Butcher. Bell, Manchester; Adlington & Co., Bedford Row. Feb. 18.  
Benham, William, Alexander Square, Brompton, Middlesex, Lodging and Boarding House-keeper, and Coal Merchant. Cannan, Off. Ass.; Blake & Co., Essex Street. Jan. 21.  
Blethyn, Thomas, Bristol, Woollen Draper. White & Co., Bedford Row; Messrs. Bevan, Bristol. Jan. 21.  
Barker, Wm., and Samuel Adams, Nottingham, Hosiers and Lace Manufacturers. Yallop, Furnival's Inn; Parsons, jun., Nottingham. Jan. 24.  
Brown, George, Southampton, Timber Merchant. Bebb, Great Marlborough Street. Jan. 28.  
Baker, Isaiah, Etingshall, Sedgley, Stafford, Screw Forger. Clowes & Co., Temple; Colts, Stourbridge; Richards & Co., Birmingham. Jan. 28.  
Bailey, Richard, Birmingham, Victualler and Hop

Merchant. Chaplin, Gray's Inn Square; Harrison, Birmingham. Jan. 28.  
Beynon, John, Llanelly, Carmarthen, Ironmonger. Clarke & Co., Lincoln's Inn Fields; Harley, Bristol. Jan. 28.  
Bond, James Garrett, Great Yarmouth, Norfolk, Draper and Mercer. Reynolds & Co., Great Yarmouth; Clarke & Co., Lincoln's Inn Fields. Jan. 31.  
Bell, James Waller, Oldham, Lancaster, Linen and Woollen Draper. Messrs. Baxter, Lincoln's Inn Fields; Sale & Co., Manchester. Feb. 4.  
Baker, Thomas, Newport, Monmouth, Innkeeper. Hall, New Boswell Court; Prothero & Co., Newport. Feb. 4.  
Brazendale, Thomas, Preston, Lancaster, Coach Builder and Harness Maker. Adlington & Co., Bedford Row; Walker or Ascroft, Preston. Feb. 4.  
Breckels, Samuel, High Street, Southwark, Surrey, Bedstead Maker. Cannan, Off. Ass.; Tadhunter, Bermondsey Street. Feb. 7.  
Baker, Wm. junr., lately of Upper King Street, Bloomsbury, Carver and Gilder, but now of Tavistock Street, Covent Garden. Pennell, Off. Ass.; Blaine, Chancery Lane. Feb. 7.  
Beeson, Bennet, Nottingham, Lace Manufacturer. Rodgers, Devonshire Square, Bishopgate St.; Unwin, Sheffield. Feb. 7.  
Bishop, Thomas Bennett, Fonthill Magna, Dorset, late a Grocer, but now a Miller. Capes & Co., Bedford Row; Wills & Co., Shaftesbury. Feb. 11.  
Britain, John, sen., Birmingham, Jeweller, James, Birmingham; Church, Great James, Street, Bedford Row. Feb. 18.  
Bradley, Wm., late of Upper Charlotte Street, St. Pancras, but now of Manchester, Picture Dealer. Milne & Co., Temple; Bent, Manchester. Feb. 21.  
Bulman, Job James, Newcastle-upon-Tyne, Oil Merchant and Seed Crusher. Freshfield & Co., New Bank Buildings; Stanton, Newcastle-upon-Tyne. Feb. 21.  
Collins, John, Staines, Middlesex, Hotel Keeper. Edwards, Off. Ass.; Messrs. Robinson, Queen Street Place. Jan. 21.  
Champion, Frederick, of the Haymarket, Woollen Draper. Abbott, Off. Ass.; Bicknell, Manchester Street, Manchester Square. Jan. 28.  
Colbron, William, Mill Street, Hanover Square, Tailor. Johnson, Off. Ass.; Woolton, Tokenhouse Yard. Jan. 28.  
Cusel, Herman, North Buildings, Liverpool Street, London, Merchant. Graham, Off. Ass.; Jones & Co., Size Lane. Feb. 4.  
Cartwright, Thomas, and Luke Noble, Halifax, York, Silversmith. Inques & Co., Ely Place, Stocks & Co., or Wavell, Halifax. Feb. 7.  
Cornwell, James, Wolverhampton, Stafford, Shoe Manufacturer. Philips & Co., Wolverhampton; Philpot & Co., Southampton Street, Bloomsbury. Feb. 7.  
Costar, Benjamin, Oxford, Painter, Plumber, and Glazier. Walker, Oxford; Risdon & Co., Jewry Street. Feb. 11.  
Cooper, John, Joseph Cooper, and Thomas Cooper, Slough, Buckingham, Engineers and Smiths. Lackington, Off. Ass.; Coe & Co., Pancras Lane. Feb. 14.  
Cock, Edward, Plymouth, Devon, Linen Draper. Barn, Plymouth; Poole & Co., Gray's Inn. Feb. 14.  
Cawood, Robert, Leeds, York, Woollen Cloth

- Rogerson, Joseph, Wigan, Lancaster, Apothecary. *Ansdell*, Liverpool; *Adlington & Co.*, Bedford Row. Feb. 13.
- Sutcliffe, Elizabeth, Rochdale, Victualler. *Clarke & Co.*, Lincoln's Inn Fields; *Whitehead*, Rochdale. Jan. 21.
- Salter, James, Bristol, Patten and Clog Maker. *Austen & Co.*, Gray's Inn; *Arnold, & Co.*, Birmingham; *Cornish & Co.*, Bristol. Jan. 24.
- Smith, Thomas Goswell Street, Grocer. *Lockett, Off. Ass.*; *Richardson*, Ironmonger Lane. Jan. 28.
- Shaw, John, Bolton-le-Moors, Lancaster, Joiner and Builder. *Chilton & Co.*, Chancery Lane; *Hulton*, Bolton. Jan. 28.
- Sharp, Charles, High Street, Southwark, Surrey, Tailor. *Graham*, Off. Ass.; *Jackson*, New Inn. Feb. 4.
- Shrubsole, Robert, Wapping Wall, Middlesex, Miller. *Edwards*, Off. Ass.; *Souther*, Ely Place. Feb. 4.
- Smith, Thomas, Gloucester, Money Scrivener. *Whitcomb & Co.*, Gloucester; *Plucknett & Co.*, Lincoln's Inn Fields. Feb. 4.
- Smithies, Charles, Bradford, York, Worsted Spinner. *Jacques & Co.*, Ely Place; *Battye & Co.*, Bristol. Feb. 4.
- Swallow, Thomas, Manchester, Corn Factor. *Johnson & Co.*, Temple; *Seddon & Co.*, Manchester. Feb. 7.
- Smith, Edward, Great Yarmouth, Norfolk, and of the City of Norwich, Linen Draper and Tea Dealer. *Reynolds & Co.*, Great Yarmouth; *Clarke & Co.*, Lincoln's Inn Fields. Feb. 14.
- Stirk, Zebulun, sen., Zebulun Stirk, jun., and John Wade Thornton, Leeds, York, Machine Makers. *Wiglesworth & Co.*, Gray's Inn Square; *James & Co.*, Leeds. Feb. 14.
- Sykes, Joseph, Netherton, Almonbury, York, Woollen and Fancy Cloth Manufacturer. *Van Sandau*, Old Jewry; *Brook*, Huddersfield. Feb. 18.
- Scruton, William, Ripon, York, Chymist and Druggist. *Blower & Co.*, Lincoln's Inn Fields; *Dewes*, Knaresborough. Feb. 21.
- Smith, Edward, and David Chalmers, Great Yarmouth, Norfolk, and of the City of Norwich, Linen Drapers and Tea Dealers. *Reynolds & Co.*, Great Yarmouth; *Clarke & Co.*, Lincoln's Inn Fields. Feb. 21.
- Tolson, Joseph, and John Sunderland Tolson, Huddersfield, York, Fancy Cloth Manufacturers. *Van Sandau & Co.*, Old Jewry; *Jacob & Co.*, Huddersfield. Jan. 21.
- Thomas, William, Leamington Priors, Warwick, Builder. *Lampray & Co.*, Leamington Priors; *Taylor & Co.*, Bedford Row. Jan. 28.
- Taylor, John, Sunderland, Durham, Draper. *Makin or Upton*, Manchester; *Mitchell & Co.*, New London Street. Feb. 11.
- Turnham, William Henry, Leicester, Innkeeper. *Jeyes & Co.*, Chancery Lane; *Berridge & Co.*, Leicester. Feb. 14.
- Tomlinson, William, jun., Birmingham, Iron and Steel Merchant. *Austen & Co.*, Gray's Inn; *Fellowes, Dudley*; *Reece*, Birmingham. Feb. 14.
- Tealdi, Pietro Ascanio, Manchester, Merchant. *Johnson & Co.*, Temple; *Bagshaw & Co.*, Manchester. Feb. 14.
- Taylor, Nathaniel Henry, Leeds, York, Seed Crusher and Dye Wood Cutter. *Walter & Co.*, Symond's Inn; *Tolson*, Bradford. Feb. 21.
- Tate, George, Wisbech, Saint Peter, Cambridge, Fellmonger. *Watson*, Wisbech, St. Peter's; *Jenkins & Co.*, New Inn. Feb. 21.
- Virtue, Thomas, Woodbridge, Suffolk, Corn Merchant. *Taylor & Co.*, Bedford Row; *Churchyard & Co.*, Woodbridge. Feb. 4.
- White, John, King William Street, West Strand, Middlesex, Chymist and Druggist. *Gibson, Off. Ass.*; *Dods & Co.*, Northumberland Street, Strand. Jan. 21.
- Winstanley, John, Chorley, Lancaster, Druggist and Grocer. *Chilton & Co.*, Chancery Lane; *Hall*, Clitheroe; *Hulton*, Bolton. Jan. 21.
- Walter, Richard, Coventry, and of Wood Street, London, Warehouseman. *Wood & Co.*, Corbet Court, Gracechurch Street. Jan. 31.
- Westhead, John, Manchester, Small Ware Manufacturer. *Norris & Co.*, Bartlett's Buildings, Holborn; *Norris*, Manchester. Jan. 31.
- Walker, Richard, Abertclery, near Pontypool, Monmouth, Ironmaster. *Edwards*, Pontypool; *Gore & Co.*, Rolls Chambers, Chancery Lane. Jan. 31.
- Wyatt, William, Union Street, Southwark, Victualler. *Clark*, Off. Ass.; *Vandercom & Co.*, Bush Lane. Feb. 4.
- Watson, John, and John Cooper, George Yard, Macclesfield St., Westminster, Silver Plasters. *Green*, Off. Ass.; *Warren*, Claremont Square. Feb. 4.
- White, Edward Josiah, Weaver's Lane, Tooley Street, Southwark, Surrey, Orebil and Cudbear Manufacturer. *Pennell, Off. Ass.*; *Virgo*, Essex Street, Strand. Feb. 7.
- Warren, Hugh, Northampton, Innholder. *Austen & Co.*, Gray's Inn; *Howes*, Northampton. Feb. 11.
- Walker, Joseph, Richard Ackroyd, and Edward Antey, Leeds, York, Stuff Merchants. *Lawrence & Co.*, Old Fish Street, Doctors' Commons; *Morris & Co.*, Bradford. Feb. 18.
- Woolcott, Henry, Bristol, Marble Mason and Builder. *Letts*, Bartlett's Buildings, Holborn; *Leman*, Bristol. Feb. 18.
- Wheeler, John, Southampton, Printer. *Randall & Co.*, Southampton; *Makinson & Co.*, Temple. Feb. 21.
- Younger, Robert Brown, and Christopher Irving, Crane Court, Fleet Street, Publishers and Proprietors of the Weekly Publication, called the Royal Amusement Gazette. *Edwards, Off. Ass.*; *Hare*, Gray's Inn Square. Jan. 24.
- Young, Thos., otherwise Thos. Munn, Southampton, Trader in Yachts and Vessels. *Blanchard*, Southampton; *Davies & Co.*, Warwick Street, Golden Square. Feb. 18.

## PRICES OF STOCKS.—Tuesday, 25th Feb. 1840.

Bank Stock, div. 7 per Cent.	- - - - -	178½
3 per Cent. Reduced	- - - - -	91½ a ¼ a ½
3 per Cent. Consols Annuities	- - -	90½ a ¼ a ½
3½ per Cent. Reduced Annuities	- - - -	99½ a ½
New 3½ per Cent. Annuities	- - - - -	98½ a ½
Long Annuities, expire 5th Jan. 1860	- -	14 a ¼
Annuities for 30 years, exp. 5th Jan. 1860	- -	13½
India Bonds, 3 per Cent.	- - - - -	2 dis. a par
South Sea Stock, div. 3½ per Cent.	- - - - -	100½
3 per Cent. Consols for Acct., 27th Feb.	90½ a ¼ a ½	
Exchequer Bills, 1000l. at 1½d.	- - -	4s. a 7s. pm
Ditto	500l.	- - - - - 4s. a 7s. pm
Ditto	Small	- - - - - 4s. a 7s. pm

# The Legal Observer.

SATURDAY, MARCH 7, 1840.

— “ Quod magis ad nos  
pertinet, et nescire malum est, agitamus.

HORAT.

## THE BANKRUPTCY COMMISSION.

In another part of the present number will be found the Questions circulated by the Commissioners for inquiring into the laws relating to Bankrupts and Insolvent Debtors, which are well worthy of the attention of our readers. We propose, on the present occasion, to advert to that part of them only which relates to the plan suggested by them for consideration for administering the law of bankruptcy and insolvency.

The main feature of this plan is, to abolish the Courts of Review and the Insolvent Debtor's Court, and to form a general Court for the administration of the law relating to bankrupts and insolvents, such Court to consist of a certain number of co-ordinate judges, some to be stationed in London, others in certain districts throughout the country: the Court to have original jurisdiction in all matters of bankruptcy and insolvency, subject to appeal in the manner mentioned in the paper to which we refer. The judges sitting in London to make rules, to be approved of by the Lord Chancellor; and the same practice to be observed in the Court both in London and the country.

We have no hesitation in saying that we consider this plan, if carried out, would be a great improvement on the present mode of administering the law of bankruptcy. We have no wish to revive the angry feeling which was roused by the establishment of the Court of Bankruptcy; but it will be admitted that the Court of Review has never acquired the confidence of the profession or the public, and we cannot, therefore, regret its abolition. We are inclined, on the whole, to prefer the appointment of country commissioners of bankrupts to the ad-

nistration of the law of bankruptcy by means of circuits.

We collect from the questions that the commissioners have considered the propriety of abolishing the distinction between traders and others as to rendering them subject to the bankrupt laws; and that their impression would be to abolish this distinction. We doubt, however, whether it is not too serious a change to be hastily made. We fear there is no chance of the report being presented sufficiently early for carrying its provisions into effect in the present session; but no answers to these questions will be received after Easter, when the commissioners will proceed to prepare their report.

The profession is now anxiously awaiting the Lord Chancellor's plan on the kindred subject of Chancery Reform. We have already stated its supposed objects,<sup>a</sup> and we hear nothing to the contrary. In the meantime all further progress in the matter is suspended. Some returns have, however, been presented, and others are in progress.

The Masters in Chancery have made a return of the number of warrants on leaving bills of costs, and the number of warrants for taxing bills of costs; and an abstract of the returns, we understand, is now in preparation, showing the hours and days they attend in their offices, and the causes pending therein. This information, by the 17th section of the Chancery Regulation Act, 3 & 4 W. 4, c. 94, they are bound to furnish yearly to the Lord Chancellor, “ who may make such order for giving publicity and access to such list as he may think fit;” and it is now to be laid before the House of Commons.

<sup>a</sup> See ante, p. 290.

## BANKRUPTS AND INSOLVENT DEBTORS INQUIRY.

The following are the questions of the Commissioners for inquiring into the laws relating to Bankrupts and Insolvent Debtors, addressed to the members of the profession. The scope of several of the questions will shew the alterations which have been proposed to the Commissioners.

### QUESTIONS.

"1. Would it in your opinion be advantageous to the public that there should be one court for the administration of the laws relating to bankrupts and insolvent debtors, or that the jurisdictions should be distinct, as at present; and what are the grounds of your opinion?

"2. In your opinion could the estates of bankrupts and insolvent debtors be advantageously administered under the same system of law, both as applying to the heavier bankruptcy cases, and to the small cases which now come into the Insolvent Debtors' Court?

"3. If so, is your opinion in favour of the system pursued in the Court of Bankruptcy, or of that which is pursued in the Court for Relief of Insolvent Debtors, or of any modification of both or either, or of any, and what other system in preference to either, and will you state any advantages to creditors which the course in bankruptcy has over the course in insolvency, or that of insolvency over the course in bankruptcy?

"4. Have you had a knowledge, and how recently, of the course of practice in the Insolvent Debtors' Court?

"5. Have you known any cases, and how many, in the Insolvent Debtors' Court, where you believe that a better dividend would have been got by making the party a bankrupt?

"6. Have you known any cases, and how many, in bankruptcy, where you believe that a better dividend would have been got by the party passing through the Insolvent Debtors' Court?

"7. Have you yourself had reason to know in any cases, and in how many, that the property of an insolvent debtor has been diminished to the prejudice of a dividend, between the time of his going to prison, and the time of his petitioning the Insolvent Debtors' Court?

"8. Have you yourself had reason to know in any cases, and in how many, that the property of a bankrupt has been diminished to the prejudice of a dividend, between the time of his having committed an act of bankruptcy, and the time of his being adjudged bankrupt?

"9. Do you think it would be beneficial to add any, and if any, what acts of bankruptcy to those now established by law?

"10. Would you think it desirable that the law should allow a trader himself to be examined as to his act of bankruptcy, either before or after adjudication?

"11. In your experience what has been the effect of the statute 2 and 3 Victoria, c. 29, intituled, 'An Act for the better protection of

parties dealing with persons liable to the bankrupt laws?'

"12. In your experience do traders become bankrupts by their own consent generally?

"13. Would it in your opinion be desirable that the law should allow the property of a person, who is unable to pay his debts in full, to be divided rateably amongst his creditors by an immediate voluntary process on the part of the debtor himself, as well as by a compulsory process on the part of one or more creditors?

"14. Do you think that the law should allow a party, who is in debt, not arrested, and not a trader, to seek the benefit of a *cessio bonorum*, where there are no *bona* to be ceded?

"15. Do you think that there is wise policy in providing a facility for persons, not traders, to seek at their own convenience, some process for getting rid of their debts?

"16. By the act 1 and 2 Victoria, c. 110, for 'Abolishing arrest on mesne process, except in certain cases,' more effectual remedies were given to judgment creditors, so that a judgment creditor may now get all the lands, tenements, and hereditaments of his debtor under an elegend; he may also take in execution any money or bank notes, cheques, bills of exchange, bonds, specialities, or other securities for money of his debtor, and sue in the name of the sheriff for the amount; judgments, if registered, are a charge upon the real estate of a debtor, present or future; and government stock and shares in any public company may be charged by order of a judge on application of a judgment creditor. Having the further remedies here stated, do you think it desirable that a judgment creditor should have the power of taking the person of his debtor in execution, except by order of a judge upon affidavit of probable cause for believing that the debtor is about to abscond?

"17. These additional remedies being given to judgment creditors, could anything, and what, be got from the debtor by imprisonment of the person, except the discovery by this species of duress of some property concealed?

"18. Do you believe that the knowledge that there is a law of imprisonment for debt has some effect, or none, in inducing a man to pay a debt, when it is demanded?

"19. Is it your opinion that the knowledge and fear of that law has in any degree an influence to make a man pay what he owes, or refrain from incurring debt, which he would be more likely to incur if there were no such law?

"20. Are you acquainted with the operation of Courts of Requests, and is it your opinion that they should be abolished?

"21. Do you believe that those courts would have the effect which they have in producing payment, if they had not the power of imprisonment?

"22. Are you aware that process from those courts against property is so easily evaded, that it is commonly deemed useless to employ it?

"23. Would it, or would it not, in your opinion, be better for the purpose of procuring

payment through the medium of some property concealed, that a judgment creditor should have the power of bringing his debtor in a summary way before a proper tribunal for examination as to his property, and giving such tribunal a power, in the event of his answers not being satisfactory, to imprison the debtor until he answered to the satisfaction of the court, or satisfied the judgment?

"24. Do you think it more to the advantage of the creditor, that the debtor, being in prison at his suit, should be the petitioner for relief against the general law, and have to show his title to the indulgence; or that the onus should lie on the creditor of proving matter to justify a criminal commitment?

"25. Do you, from your experience, believe that the abolition of arrest on mesne process has been beneficial, or not, to creditors?

"26. Do you, from your experience, believe that it has been beneficial, or not, to debtors?

"27. On what sort of dealings, or business, is your experience on this head founded?

"28. Is it, or is it not, in your opinion essential to the due administration of justice in bankruptcy, that each judge or commissioner should have full power to enforce his orders, if not appealed against, and to repress contempts of court in a summary way, by fine or imprisonment?

"29. By the present practice, when a creditor wishes to make a man a bankrupt, he makes an affidavit of his debt, which is filed in the office of the secretary of bankrupts, and executes a bond to the Great Seal in the penalty of 20*l.*, conditioned to proceed in the fiat; upon this a petition is prepared, directed to the Lord Chancellor, praying for the issue of a fiat, whereupon the fiat is signed by the Lord Chancellor, and issued as of course: in your opinion is there any and what advantage to the public in requiring the fiat or authority of the Lord Chancellor to authorize the creditor to prosecute his complaint?

"30. Would it, in your opinion, be more advantageous that the proceedings should originate before the judge or commissioner who is to adjudicate upon the bankruptcy?

"31. Would it, in your opinion, be advantageous to the public that the judge or commissioner who adjudicates the bankruptcy, should have jurisdiction to decide upon all matters in bankruptcy that used to be decided by the Lord Chancellor, and may now be decided by the Court of Review, subject to appeal?

"32. Would it, in your opinion, be desirable that, in cases of appeal, the appellant should give security for the performance of the judgment, if affirmed, and also for the costs?

"33. The proceeding to make a trader a bankrupt is an *ex parte* proceeding, and a trader may be adjudicated a bankrupt without any previous intimation: what is your opinion of this state of the law?

"34. Supposing that you object to the present state of the law as to the adjudication, do you think a trader should, in the first instance, have notice of the intended proceeding, and

be allowed to dispute the adjudication before his property is taken possession of? Or if you think it essential, having regard to the interests of creditors and the prevention of frauds, that the application to adjudicate a bankruptcy should, in the first instance, be *ex parte*, and without notice to the trader, what is your opinion of a provision of the following kind,—that upon an application to make a party a bankrupt, on *ex parte* evidence of the debt, trading, and act of bankruptcy, an order should be made to show cause only, but that, upon such order, the messenger should take possession of the trader's property, and keep possession until the order was made absolute or discharged; and that, unless the trader, within a certain time mentioned in such order, showed sufficient cause to the contrary, the said order, after proof of notice thereof to the trader, should be made absolute, and the party advertised a bankrupt forthwith; or, having due regard to the injury which a seizure of property must produce to a trader's credit, do you think it would be more consistent with justice, and at the same time not injurious to creditors, that, instead of allowing the seizure of property upon an *ex parte* application, in *all cases*, upon an order to show cause being made, such seizure should be confined to cases upon affidavits, showing probable cause of the trader being about to abscond, or make away with his property?

"35. By the present law a bankrupt, who has done no act amounting to acquiescence, may bring an action at any time (if not barred by the statute of limitations) against his assignees, to try the validity of the fiat; so, a person claiming adversely to the assignees, if he has not by his conduct or otherwise, admitted their title, may at any time (if not barred by the statute of limitations) bring an action against them, and dispute the validity of a fiat; what is your opinion of this state of the law?

"36. Do you see any objection, particularly if the party be allowed to show cause against the adjudication in the manner suggested in the previous query, in providing that the adjudication, if the bankrupt do not appeal against it within a certain period, should be conclusive in all cases?

"37. Would you rather in such case confine the conclusiveness of the adjudication to the bankrupt, and persons indebted to his estate, in any action or suit brought by an assignee for a debt or demand, for which the bankrupt himself might, had he not been adjudged bankrupt, have sustained any action or suit, or would you confine it, as in the Irish act, 6 and 7 Will. IV., c. 14, s. 115, to actions brought by the assignees, where the debt sought to be recovered shall not exceed 20*l.*?

"38. Supposing you would confine the conclusiveness of the adjudication as above stated, do you see any objection, with the view of making persons who have claims against assignees prosecute such claims without delay, in providing that, in actions at law or suits in equity against an assignee by any other person,

the adjudication should be final, or that no proof should be required at the trial or hearing, of the petitioning creditor's debt, trading, or act of bankruptcy, unless the declaration be delivered, or bill filed, within a certain period after the adjudication be advertised, or cause of action or suit accrue against such assignee, as well as requiring notice, as now, under the 90th and 91st sections of the 6 Geo. IV., cap. 16, of the party's intention to dispute some, and which of such matters?

"39. What is your opinion of the present law, which requires the signature of a certain number of the bankrupt's creditors, to testify their consent to his having his certificate?

"40. Do you think that the certificate by the judge or commissioner of the bankrupt's conformity to the statutes, and of his having made a full discovery of his estate and effects, ought to depend on the previous consent of any of the creditors?

"41. Have you found in your experience that the necessity of obtaining such consent, in many cases, occasions much expense to the bankrupt?

"42. Can you suggest any mode by which such expense might be diminished?

"43. Instead of requiring the previous consent of creditors to the certificate, would it in your opinion be more advisable to allow any of the creditors of the bankrupt to be heard before the judge or commissioner, against his signing the certificate?

"44. Do you think, judging from your experience, that the supineness of creditors would, in the generality of cases, make the obtaining the certificate an easy thing, by the commissioner or judge certifying a conformity to the bankrupt law, and the creditors failing to attend?

"45. Or would this be likely to happen from the difficulty which an injured creditor would have in establishing his case against the opposing efforts of the bankrupt's friends?

"46. In your opinion, should the conduct of the bankrupt in the mode of contracting debts, or in disposing of his property *before* the bankruptcy, form part of the consideration in granting the certificate?

"47. Would it, in your opinion, be advisable in any, and if so, in what class of cases to withhold the granting of the certificate, until after an audit or the payment of a dividend, or any, and what other time?

"48. Would you suggest any, and what other alteration with regard to the certificate?

"49. Would it, in your opinion, be advantageous to the public, that the judge or commissioner, before whom a bankrupt passes his last examination, should have power to punish such bankrupt by imprisonment, for a limited time, for great misconduct or fraud?

"50. In your opinion, is it more advantageous to creditors that the property of a bankrupt should be administered under a fiat in bankruptcy, or a trust deed?

"51. Do you believe that trust-deeds are more resorted to than formerly, and if so, what do you believe to be the cause?

"52. If, in any cases, a trust-deed is to be preferred, does that arise from the expense of prosecuting a fiat in the Court of Bankruptcy?

"53. Do you think that the Court of Bankruptcy should have any, and what power over the trustees under such deeds, and what provisions do you recommend to this purpose?

"54. Do you think it would be desirable to abolish the fee of 10*l.* on issuing the fiat, and the fee of 20*l.*, paid into court on the choice of assignees, and in lieu thereof, to require the payment into court of a regulated per centage on all property passing through the court; or in what other way do you think it would be desirable to regulate the fees of the court, so as not to be a burthen upon small estates?

"55. Should the official assignees, in your opinion, be paid out of a joint fund, or out of each estate?

"56. In your opinion ought the official assignee to be liable for damages or costs in any action or suit for anything done by him in execution of the duties imposed upon him as such official assignee?

"57. Have you suffered by failures in the country, or have you had experience in the working of fiats of bankruptcy in the country?

"58. Have you had reason to be satisfied with the administration of bankrupts' estates in the country. If not, state the grounds of your dissatisfaction, and particularly whether the constitution of the courts of commissioners in the country, the uncertainty attending these tribunals both with respect to the law, and the practice, the costs of working fiats in the country, the difficulty of access to the proceedings, the want of publicity, and the checks attendant thereupon, the delay in getting in the property, the safety of the funds when collected, the time of making dividends, the number and the amount of the dividends, the absence of any sufficient motive to secure activity on the part of assignees, or whether any and which of the above matters form grounds of dissatisfaction?

"59. What remedies occur to you as practicable for any defects which you have observed in the administration of bankruptcy in the country?

"60. What is your opinion of the following plan which has been suggested to this commission, either as a plan for administering the law both of bankruptcy and insolvency throughout England and Wales, in the event of the Insolvent Debtors' Court being abolished, or as a plan for administering the law of bankruptcy only?—

"The Court of Review to be abolished.

"To have one court for the administration of the laws relating to bankrupts and insolvents, such court to consist of a certain number of co-ordinate judges, some (as the present commissioners) to be stationed in London, others in certain districts throughout the country, to be determined upon.

"The court to have original jurisdiction in all matters of bankruptcy and insolvency subject to appeal.

"The law to be administered in London and

in such country districts before any one or more of the judges of the court, subject to appeal from the decision of any one judge either in London or the country to three of the judges in London, and in certain matters and under certain restrictions from the three to the Lord Chancellor.

"All appeals before the three judges to be proceeded upon by *viv<sup>d</sup> voce* examination of witnesses, (as now in the Subdivision Courts) unless the court think it expedient under special circumstances to receive testimony by affidavit.

"Appeals before the Lord Chancellor to be decided upon the evidence taken before the three judges, and upon that alone, unless the Lord Chancellor think it expedient to have further evidence by *viv<sup>d</sup> voce* examination or by affidavit, and where further *viv<sup>d</sup> voce* evidence required, the Lord Chancellor to remit the case to the three judges for that purpose.

"The judges of the court sitting in London, or the major part of them, to make general rules and orders to be approved of by the Lord Chancellor for regulating the forms of proceedings, and the practice to be observed in the court both in London and in the country.

"The proceedings before any of the judges in the country to be transmitted to the court in London, to be records of the court, and to be kept as such among the records thereof, but the solicitors prosecuting any matter of bankruptcy or insolvency in the country to have office copies of such proceedings in the same manner as solicitors do now of proceedings in the Court of bankruptcy.

"61. Might not other matters for which now special commissions are issued, such as commissions of lunacy,—for assigning guardians,—for examination of witnesses,—for taking answers, &c.—be advantageously prosecuted before any one of the judges of such court?

"62. It has been suggested to this commission, that instead of having local judges for the country districts, it would be more advantageous that the law of bankruptcy for England and Wales should be administered in the court in London, with the aid of circuits, for certain matters, and with the power of appointing examiners where necessary,—as, for instance, all adjudications of bankruptcy, and choice of assignees to take place in London,—the last examination of bankrupts, and audits, and dividends to take place before a judge on his circuit, and the court to have power to appoint examiners for counties or districts for special purposes, what is your opinion of this plan, and of the relative merits of the two; and state further, what part, if any, of the business under a fiat in bankruptcy you think, from your experience, could be conveniently and efficiently dispatched on circuit?

"63. If you do not approve of either of the plans above suggested, have you any, and what other course to suggest for the better administration of the law relating to bankrupts and insolvent debtors throughout England and Wales?"

## THE PRIVILEGE QUESTION.

From an introductory preface by George Bowyer, Esq., A.M., Barrister at Law, to a reprint of Sir Humphrey Mackworth's pamphlet on *Ashby v. White* (which has been sent us — published by G. F. Cooper), we extract the following passages on the question of the *expediency* or *necessity* of the privilege now claimed by the House of Commons.

"How have members hitherto regulated their conduct with respect to speeches and letters to their constituents?

"Speeches and letters are practically the most important means of the two, for the justification of members before their constituents,—and yet they never have been protected by privilege. The difficulty, when it arises, is disposed of in a practical manner, according to circumstances. It is not often that a member is called upon to justify a vote given in Parliament, by communications of a libellous character. But when this does happen, the constituent knows that the member is responsible to the law for whatever he says or writes out of Parliament; and, on the other hand, the persons whose conduct he finds it necessary to reflect upon, are aware that when the member has said or written no more than the occasion required in a matter of public import, and (as is generally the case) of public notoriety, they would have little or no chance of recovering more than nominal damages. So it would be with Parliamentary papers sent to constituents. The constituents would know that some papers could not be communicated to them. If their representative is a minister, they cannot expect to hear from him things which it may be of great consequence for the justification of his votes, but which his privy councillor's oath, or the interests of his party, prevent him from divulging. In both cases, the constituents should, on the most constitutional principles, exercise forbearance towards their representative, who must be presumed to possess, in some degree, the confidence of a majority of their body.

"But if, among the papers communicated to them by the member (published by the authority of the House, as being fit to be made public), there should be some expressions on which an action could be brought, there is no solid reason to suppose that a jury would give damages against him or the publisher. Nobody supposes that the heavy damages given in the case of *Stockdale v. Hansard* were grounded on any other reason than the plea of privilege; that plea made it of importance that the point of law arising thereon should be brought to issue in a decisive manner, for the sake of future plaintiffs, against whom groundless charges might be made by a petitioner or a witness before a parliamentary committee, and disseminated throughout the kingdom in the imposing form of a Parliamentary paper.

"The exercise of very ordinary discretion by a standing committee of the House, to whom, in doubtful cases, it might be referred,

whether certain papers should be published,— would reduce the number of cases in which such a question would arise to something very insignificant.

"Again, it may be questioned, whether a member is, in strictness, morally justified in disseminating what is clearly a libel, for the sake of shewing the grounds on which he acted.

"But, however convenient it may be to members that there should be no restriction to their power of laying before their constituents all the materials on which their votes are grounded; that cannot, surely, be absolutely necessary, unless the character of a member be that of a delegate or procurator, bound to account with those whose mouth-piece he is, for all his acts done as such. Convenience is not sufficient to establish a privilege; necessity must be shown. It would be very convenient that the Commons should have a power of examining witnesses on oath, but they have it not. But a stronger argument might be urged, that the House of Commons—the grand inquest of the nation, who may impeach the greatest persons in the realm for the highest crimes known to the law—should have a power of examining on oath, which is exercised by every petty Court in the kingdom, than any that can be brought forward in support of the privilege of investing a printer with an immunity from all law in the publication of parliamentary papers. It might, indeed, be argued with some force, that the power to examine on oath is a necessary consequence of the privilege of publishing the result of the examinations, in the manner, and with the immunities contended for.

"It is argued, that unless the privilege claimed in *Stockdale v. Hansard* is established, it will not be expedient to print any parliamentary papers, except for the use of members. But it is evident that there are a multitude of documents relating to law, finance, statistics, and public works, printed by order of Parliament, which contain nothing that the greatest ingenuity could torture into a libel. Probably this is the most useful information of the kind that can be published to the community at large. People are sharp-sighted enough to find out grievances against public servants and others, without parliamentary papers. But there must be very few, if indeed there are any cases, in which it would be even desirable that those parts of a document which contain criminalatory matter, should be communicated to the public in that shape; or, that they should be brought before any persons but those who have to decide on the matters therein contained. Those parts might, in many cases, be left out, after the requisite number of copies have been struck off for members, and the remainder printed for the public. In some cases, however, it would be necessary to confine the whole document to the use of members. With these precautions, it is apprehended, that a verdict would hardly ever be given against the publishers of the House for libel. But if such a case should occur, it would be

necessary for the House to pay the damages, by a vote of public money.

"Such a vote would of course be unpopular, and that unpopularity would produce greater caution in the committee entrusted with the supervision of the printed papers. It is apprehended that, under such a system, the public would obtain all the information requisite for every practical and constitutional purpose.

"It would, however, be desirable to enact a law securing members from liability to an action, in cases where parliamentary papers, not intended for the use of any persons but members, accidentally passes into other hands. It should be incumbent upon the prosecutor to show, in such cases, an intention on the part of the member to injure him. The prosecutor should also be required to deny distinctly, by affidavit, every material fact in the supposed libel.

"These provisions would enable the members to make a sufficiently free use of parliamentary papers for all practical purposes, without depriving the subject of that security against defamation of the most formidable kind, to which the laws and ordinary justice alike entitle him.

"It would also deserve grave consideration whether the same privilege, which belongs to published reports of proceedings in Courts of Law, ought not to be extended by the legislature to parliamentary papers, containing the evidence on which bills of pains and penalties, and addresses of both Houses for the removal of public officers, are founded; and also whether in the last-mentioned species of case, the Commons ought not to be invested with a power of examining on oath.

"Those proceedings being the judicial remedy provided by the constitution in certain extraordinary cases, ought, it would seem, to be clothed with the privileges belonging to other proceedings of like nature. The same principle seems applicable to investigations before election committees.

"Reasons which are obvious render it doubtful whether any facilities should be given to proceedings by bill of pains and penalties, but there is not perhaps any sufficiently strong ground to question the expediency of investing the House of Commons with power to examine on oath, in the case of an address to the crown, for the removal of a Judge, or other public officer.

It is submitted to the reader, whether upon close examination, it does not appear that though the privilege contended for of publishing parliamentary papers to the whole nation,—of, in fact, carrying on a trade in parliamentary papers under cover of a total immunity from the laws, may be convenient in certain respects, yet it is unnecessary. But nothing short of absolute necessity could justify the existence of a power in any person or body of men, however august, to set themselves above the laws whereby the rights of the subject are protected from injuries, which it is the chief object of all civil society to prevent.

"If," says Mr. Pemberton, in his most ad-

writable letter, 'the order of the House of Commons justifies the publication of libels,' (or if that term be objected to, in circulation of false statements injurious to individuals), 'it can, by parity of reasoning, justify the violation of copyright; it may, in fact, justify any act or wrong whatever.'

"The authority which the House of Commons ought to have, and must have with the nation, renders such a power in the hands of that assembly the more dangerous.

"It is frequently extremely difficult for a man to cope with a private libeller. But who is sufficiently powerful not to be almost overwhelmed by a libel published with the sanction of the House of Commons? What then would be the condition of a man so placed, if he is to be precluded from even going into a court of justice for redress?

"We must not conceal from ourselves, that in the course of possible, though at present not probable events, a time may come when a majority of the House of Commons may be disposed to use the privilege of publishing parliamentary papers for factious or malignant purposes. We must not allow our respect for that great assembly to render us forgetful of the danger attending all uncontrollable irresponsible power, and the evil of leaving any wrong without a legal remedy.

"'Not only,' says Humie, (A.D. 1640,) 'the present disposition of the nation insured impunity to libellers,—a new method of framing and dispersing libels was invented by the leaders of popular discontent; petitions to parliament were drawn, craving redress against particular grievances, and when a sufficient number of signatures were procured, the petitions were presented to the Commons and immediately published. These petitions became secret bonds of association among the subscribers, and seemed to give undoubted sanctioned authority to the complaint which they contained.'

"This remarkable passage (borrowed from the great advocate referred to above) is sufficient to show that the danger apprehended from this species of privilege cannot be considered entirely visionary.

"Dangerfield's case is an instance of a still more formidable abuse. There, a majority of the House published a calumnious statement, for the purpose of what, in modern times, would be called agitation.

"Is the recurrence of such proceedings impossible?

"The question is of so much consequence, that it should not be answered with reference to the present only; but after prudent consideration of what may take place under a different aspect of political affairs.

"The best security for the liberty of the subject, and the balance of the constitution, will be found in a strict adherence to the principles on which justice is usually administered.

"Nothing but the most cogent and irresistible necessity can justify a departure from those principles, and the denial of a remedy where there is a wrong."

## PRACTICAL POINTS OF GENERAL INTEREST.

### PROMISSORY NOTE.

In the case of *Whitcomb v. Whiting*, Dougl. 652, it was held that one of two joint makers of a promissory note might, by acknowledgment or part payment, take the case out of the Statute of Limitations as against the other. It will be seen from the following case that *Whitcomb v. Whiting* is still the law on this point, notwithstanding some contradictory decisions.

*Parke, B.*—The question in this case was, whether payment of interest by one of two makers of a promissory note, made after the lapse of six years from the time when the note became due, took the case out of the Statute of Limitations, with regard to the other co-maker. Mr. Platt relied upon the cases of *Atkins v. Tredgold*, 2 B. & C. 23; 3 D. & R. 200; and *Slater v. Lawson*, 1 B. & Adol. 396, as making a distinction, and throwing a doubt upon the old case of *Whitcomb v. Whiting*, Dougl. 652, which decided that one of two joint makers of a promissory note might, by acknowledgment or part payment, take the case out of the statute as against the other. After those two cases, undoubtedly, some degree of doubt might fairly exist as to the propriety of the decision in the case of *Whitcomb v. Whiting*; and it does seem a strange thing to say, that where a person has entered into a joint and several promissory note with another person, he thereby makes that other his agent, with authority, by acknowledgment or payment of interest, to enter into a new contract for him. But since the decisions in *Atkins v. Tredgold*, and *Slater v. Lawson*, the Court of King's Bench have twice decided that payments by one of two joint makers of a promissory note is sufficient to take the case out of the statute as against the other. The first of these cases was that of *Burleigh v. Stott*, 8 B. & C. 36, 2 Man. & R. 93, where the defendant was sued as the joint and several maker of a promissory note; and there the Court held, that payment of interest by the other joint maker was enough to take the case out of the statute as against the defendant; and that it was to be considered as a promise by both, so as to make both liable. And since the decision in that case, the Court of King's Bench have come to the same conclusion in the case of *Manderston v. Robertson*, 4 Man. & Ryl. 440; which was argued on the 22d of May, 1829. I have discovered my paper book in that case, which, it appears, was argued by Mr. Platt himself; and the Court decided there

that an account stated by one of the makers of a joint note, and part payment of the account, took the case out of the statute as to the other ; thus confirming the authority of *Burleigh v. Stott*. Then Mr. Platt relies upon the distinction in this case, that the payment was made after the statute had run, and which was pointed out by Mr. Justice *Bayley* as one of the grounds on which he distinguished the case of *Atkins v. Tredgold* from *Whitcomb v. Whiting* : that there the statute had attached, and that its operation could not be affected by any act of future payment. But I find that in *Manderston v. Robertson*, the note was dated the 9th of July, 1817, and an account was furnished by one of the joint makers on the 1st of June, 1825, to the payee, taking credit to himself for payments of interest after the six years had elapsed, but not before ; and it was held that this was sufficient to take the case out of the statute as against the other maker. There the payment was after the six years had elapsed, and yet it was held sufficient. The result is that we must consider the case of *Whitcomb v. Whiting* as good law, and there will therefore be no rule. Rule refused. *Channell v. Ditchburn*, 5 M. & W. 494 ; and see *Chippendale v. Thurston*, Moo. & M. 411 ; 4 C. & P. 98 ; *Pease v. Hirst*, 10 B. & Cr. 122 ; 5 Man. & R. 88 ; *Wyatt v. Hodson*, 8 Bing. 309 ; 1 M. & Scott, 442 ; *Rex v. Scitet*, 1 Ad. & Ellis, 196.

## NEW BILLS IN PARLIAMENT.

### GRAMMAR SCHOOLS.

This is a bill for improving the condition and extending the benefits of grammar schools.

The objects of the bill are :

First, to enable Courts of Equity, on proceedings instituted according to the usual course, to extend the systems of education in grammar schools beyond mere Greek and Latin.

Second, to provide a method by which parties connected with schools may frame new statutes, and submit them for the approval of the Court of Chancery by a cheap and summary process.

Third, to promote the visitation of schools by visitors.

Fourth, to facilitate removal of unfit masters.

Fifth, to make miscellaneous provisions.

1st.—*General jurisdiction of Courts*.—Power is given to Courts of Equity, whenever the question comes before them, to extend instruction to other branches of literature besides and in certain cases in lieu of Greek and Latin, and to make other alterations, after considering the original statutes and circumstances of each case, and the intentions of the founders. The schools remaining in all respects, not expressly altered, "Grammar Schools ;" and the same

qualifications being continued to be required in masters. .... Sections 1—4

2d.—*Summary mode of making new statutes*.—The governors, or, in certain cases of incapacity or neglect, the visitor, is empowered to draw up such statutes as seem required for rendering the school more efficient, and substantially fulfilling the intentions of the founders, according to the rules laid down for Courts of Equity.

To these statutes the governors are to endeavour to obtain the consent of the visitor (or if the visitor is the person drawing them up, he is to endeavour to obtain the consent of any governors capable of acting); and they are then to submit them for the approval of the Court of Chancery. .... 5—10

For the purpose of revising such statutes, the Lord Chancellor is to select some one master in chancery ; and for the purpose of submitting them to such master, is to appoint "a secretary for grammar schools." . . 11, 12

The governors (or visitor) are to transmit their proposed statutes to this secretary, with a full statement of the circumstances of the school, from which, and from the reports of the charity commission, and any other sources he is to draw up a statement to lay before the master, with the proposed statutes ; and the master is to report upon it as if referred to him in a cause pending, subject to be reviewed by the Lord Chancellor on petition by governors, &c. ; all necessary correspondence &c. being carried on by the secretary. 13—17

The statutes, when confirmed, are to be advertised ; and if any parties interested in the school object, they may petition the Chancellor to have them reviewed ; or if no new statutes are made, then within a certain time after the first vacancy in the office of schoolmaster, such parties may petition to have them made. .... 18, 19

New masters, on first vacancies, to be appointed, subject to a revision of statutes within a year ; and governors to have power to make arrangements with existing masters to retire, subject to approval of the Court of Chancery. 20—22

3d.—*Visitation*.—Visitors are empowered to visit once in every three years, and to charge expenses. If visitor is incapacitated, the bishop to visit.

If visitor neglect to visit (or bishop in certain cases for him), the Court of Chancery to appoint a person to visit *pro hac vice*. 23—25

4th.—*Removal of masters*.—Visitors are empowered not only to dismiss, but, with approval of Court of Chancery, to allow, in certain cases, a retiring pension. The order of dismissal to be subject to appeal to Court of Chancery ; but except by that means not to be questioned 26—32

5th.—*Miscellaneous*.—Modes of application to the Court, and some matters concerning the jurisdiction of the Chancellor, are regulated. Governors are allowed to charge expenses. Rights of Ordinary are saved. Construction is affixed to different words. .... 34—40

**LIST OF THE SHERIFFS, UNDERSHERIFFS, AND AGENTS, FOR 1840.**

From "The Attorney's Office List," published by E. Spofforth.

**ENGLAND.**

**SHERIFFS.**

COUNTIES.	UNDERSHERIFFS.	DEPUTIES AND AGENTS.
Bedfordsire... W. Frederick Brown, of Dunstable, Esq. John Pearce, of Dunstable .....	Charles J. Barnes, of Lamborne Place, Esq. Charles J. Barnes, of Lambourne.....	Dep. William Greasham, of Castle Street, Holborn. Dep. Richards & Walker, 29, Lincoln's Inn Fields.
Berkshire... H. Hippisley, of Lamborne Place, Esq. ....	William Wilbly, of Berwick....	Dep. J. W. Bromley, 1 South Square, Gray's Inn.
Durwick-spn-Tweed G. M. Dickson, of Berwick, Esq. ....	William Ody Hare, Bristol .....	Ag. Bridges & Mason, 23, Red Lion Square.
Bristol (City of) ... Richard Vaughan, Esq. ....	J. Runsey, of High Wycombe .....	Dep. Alexander & Co., 60, Lincoln's Inn Fields.
Bedkingshire ... John Peter Deering, of the Lee, Esq. ....	{ J. Runsey, of High Wycombe .....	H. Hatton, Aylesbury, Acting U.S. } Dep. Taylor & Co., 41, Bedford Row.
Cambridgesire & Huntingdonshire } Thos. Mortlock, of Little Abingdon, Esq. C. P. Harris, of Cambridge.....	Thomas Wilkinson, of Canterbury .....	Dep. Thomas Kirk, 10, Symond's Inn.
Canterbury (City of) James Fyfe, Esq. ....	J. Tollemache, of Tilstone Lodge, Esq. T. B. Dunville, of Tarporley .....	Dep. John Cole, 4, Adelphi Terrace, Strand.
Cheshire :.....	Thomas Griffith, Esq. Finchett Maddock, of Chester.....	Ag. Philip & Co., 3, Southampton St., Bloomsbury.
Chester .....	His Grace, The Duke of Wellington .....	Thomas Pain, of Dover .....
Claire Paris.....	Sir R. R. Vyryan, of Treloarren, Bart. P. P. Smith, of Truro .....	Ag. Egam & Waterman, 23, Essex Street, Strand.
Cornwall .....	Sir Henry John Joseph Hunlock, of Wingerworth, Bart. ....	Dep. Adlington & Co., 1, Bedford Row.
Coventry (City of).. Samuel Newsome, Esq. ....	Sir Geo. Mugrave, of Eden Hall, Bart. T. D. Bleasmyre, Penrith .....	Troughton & Lee, Coventry .....
Cumberland .....	{ Sir Henry John Joseph Hunlock, of Wingerworth, Bart. ....	Dep. Austen & Hobson, 4, Raymond Buildings.
Derbyshire .....	Charles Bruton, of Exeter .....	Dep. Addison, 3, Mecklenburgh Square.
Devonshire .....	Augustus Stowey, of Kembury, Esq. ....	Dep. John Clipperton, 17, Bedford Row.
Dorsetshire .....	{ John Samuel Wanley Sawbridge Esq. Drax, of Charborough Park, Esq. ....	Dep. Cwejje & Co., 19, Southampton Buildings.
Derham .....	Sir H. Williamson, of Whithurn, Bart. ....	John Bramwell, of Durham .....
Esser .....	C. Thomas Tower, of Weald Hall, Esq. ....	Thomas Morgan Gepp, of Chelmsford. Dep. T. W. Nelson, 1, New Court, Temple.
Ranter (City of) ... Richard Bastard, Esq. ....	R. T. Abraham, Exeter .....	Dep. H. T. Shaw, 18, Ely Place.
Glocestersire .....	Sir M. H. H. Beach, Williamsrip Park, Bt. J. Burrup, of Gloucester. ....	Dep. Jones & Co., 1, John Street, Bedford Row.
Gloucester (City of) Charles James Tasker, Esq. ....	Thomas Bailey, Gloucester .....	Dep. Wilton, 16, Gray's Inn Square.
Hampshire .....	{ John Meggott Elwes, of Boeington .....	Woodham & Seagram, Winchester ... Dep. Hicks & Co., 16, Bartlett's Building.
Herefordsire .....	House, Stockbridge, Esq. ....	Thomas Heywood, of Hope-end, Esq. ....
Herefordsire .....	Thomas Evans, Hereford .....	Dep. Mr. Jones, 11, Gray's Inn Square.
Herefordsire .....	George Nicholson, of Little Mundum, Esq. ....	Dep. Hawkins & Co., 2, New Boswell Court.
C. S. Chauncy, of Little Mundum, Esq. ....		

## COUNTIES. DEPUTIES.

## UNDEPUTIZED COUNTIES.

<i>North</i> .....	{ Arthur Pott, of Bentham Hill, Tunbridge Wells, Esq.	William Woodgate, of Lincoln's Inn	{ Dep. Palmer & Co., 24, Bedford Row.—Hours in Term, 11 to 5. In Vacation, 11 to 3, except between 10th August and 24th October, and then from 11 to 2.
<i>Kingston upon Hull (Town &amp; Co. of Town)</i>	W. Holmes, of Kingston-upon-Hull, Esq. Thomas Holden, Hull.....	.....	Dep. Hicks & Morris, 5, Gray's Inn Square.
<i>Lancashire</i> .....	T. P. Brothholes, of Claughton Hall, Esq. Pilkington & Co., of Preston .....	Dep. Fiddey, 14, Sergeant's Inn, Fleet Street.	
<i>Leicestershire</i> .....	Sir George Joseph Palmer, of Wamplin, Bt. H. Adecock, of Leicester .....	Dep. Parker & Co., 3, Raymond Buildings.	
<i>Lincolshire</i> .....	Thos. Geo. Corbet, of Elaham Hall, Bt. John Nicholles, of Brigg .....	Dep. Dynley & Co., 1, Field Court, Gray's Inn.	
<i>Lichfield (City &amp; Co. of the City)</i>	Haldord Wotton Hawlt, Esq. .... J. P. Dyott, of Litchfield.....	Ag. Batters, 48, Lincoln's Inn Fields.	
<i>Liverpool (City of) &amp; Meldunes</i>	George Bailey, Esq. .... R. Mason, of Lincoln .....	Dep. Willis & Co., 6, Tokenhouse Yard.	
	{ William Evans, Esq. .... Thomas France, 24, Bedford Row { <i>Successaries' Office</i> , Basinghall Street.		
	{ John Wheatton, Esq. .... H. Jackson, 15, St. Helen's Place { Burchell & Co., Red Lion Square.		
<i>Norwich (City of)</i> .....	John Barwell, Esq. .... A. Dalrymple, of Norwich .....	Dep. Adlington & Co., 1, Bedford Row.	
<i>Morristshire</i> .....	Summers Harford, of Sishowby, Esq. .... H. Mostyn, of Usk .....	Dep. White & Whitmore, 11, Bedford Row.	
<i>Newcastle upon Tyne</i> .....	Robert Boyd, Esq. .... W. Dunn, of Newcastle .....	Dep. Clayton & Cookson, 6, New Sq., Linch. Inn.	
<i>Norfolk</i> .....	W. Villebois, of Marsham House, Esq. .... F. B. Bell, of Downham Market.....	Dep. Taylor & Co., 41, Bedford Row.	
<i>Northamptonshire</i> .....	Thomas Alderson Cooke, of Peterborough C. Markham, of Northampton .....	Dep. King & Co., 13, Tokenhouse Yard.	
<i>Northumberland</i> .....	William Lawson, of Longhurst, Esq. .... G. Brunell, of Morpeth .....	Dep. Meggison & Co., 3, King's Road.	
<i>Nottinghamshire</i> .....	Sir J. G. Jackes Clifton, of Clifton, Bart. { R. Leeson, Esq.—J. Brewster, } { Dep. Taylor & Collison, 28, Great James Street, Bedford Row.—Hours same as Seal Office.		
<i>Nottingham (Town)</i>	John Nevil, of Nottingham, Esq. .... Nottingham, Acting U. S. ....	Ag. Holme & Co., 10, New Inn.	
<i>Oxfordshire</i> .....	H. Hamersley, of Gt. Hazeley House, Esq. .... Christopher Swann, of Nottingham. .... Ag. Holme & Co., 10, New Inn.	Charles Berkeley, 52, Lincoln's Inn Fields.	
<i>Poole (Town of)</i>	Ambrose Tucker, Esq. .... T. Arnold, of Poole.....	Dep. Charles Berkeley, 52, Lincoln's Inn Fields.	
<i>Bucksshire</i> .....	Samuel Richard Fydel, of Morent, Esq. .... Mr. Hell, Uppingham.....	Ag. George Weller, 29, Essex Street.	
<i>Shropshire</i> .....	Thomas Eyrton, of Eyston, Esq. .... J. J. Peele, of Shrewsbury.....	Dep. H. B. Jones, 22, Austin Friars.	
<i>Somersetshire</i> .....	John Jarr Jr., of Cameron, Esq. .... Edward Coles, of Taunton .....	Dep. W. & E. Dyne, 61, Lincoln's Inn Fields.	
<i>Southampton (Town)</i>	John Hole, Esq. .... Richard Blanchard, of Southampton. .... Dep. Davies & Cleobury, 21, Warwick St. Regent St.		
<i>Staffordshire</i> .....	Henry John Pye, of Clifton Hall, Esq. .... Francis Willington, Tarworth.....	Dep. White & Whitmore, Bedford Row.	
<i>Suffolk</i> .....	G. St. Vincent Wilson, of Redgrave, Esq. .... John Jackson, Bury St. Edmunds .....	Dep. Dixon & Co., 5, New Boswell Court.	
<i>Surrey</i> .....	{ The Honorable Peer John Locke } George Potter, of Guildford .....	Dep. Jenkins & Abbott, 8, New Inn.	
	{ King, of Woburn Farm, Chertsey }		

COUNTIES.

UNDER-SHERIFFS.

DEPUTIES AND AGENTS.

Suffolk .....	John Davies Gilbert, of Eastbourne, Esq. Francis Harding Hall, of Lewes,.....	{ Dep. France & Co., 24, Bedford Row.—Hence, see "Kent."
Worwickshire .....	Dempster Heming, of Caldecott, Esq..... J. W. Unett, of Birringham .....	Dep. Tooke & Son, 39, Bedford Row.
Westmorland .....	The Earl of Thanet..... John Heelis, Appleby .....	Dep. G. M. Gray, 9, Staple Inn.
Wiltshire .....	W. H. F. Talbot, of Lacock Abbey, Esq..... West Awdry, of Chippenham .....	Dep. Hillier & Co., 6, Raymond Buildings.
Worcestershire .....	James Foster, of Stourbridge, Esq..... Gilian & Son, of Worcester .....	Dep. Cardale & Co., 2, Bedford Row.
Worcester (City of) .....	William Corles, of Worcester, Esq..... E. Corles, of Worcester .....	Ag. Becke, 59, Lincoln's Inn Fields.
Yorkshire .....	{ Sir Thomas Aston Clifford Constable, Esq. .... of Burton Constable, Bart.....	Dep. Bewan & Anderson, 2, Adelphi Terrace.
Yorks (City of) .....	William North, of York, Esq..... J. North, of York .....	Dep. Baxter, 49, Lincoln's Inn Fields.

NORTH WALES.

Anglesey .....	Sir L. P. Jones Parry, of Madryn, Bart. Williams & Co., of Pwllheli .....	Dep. Williams & Co., 38, Hatton Garden.
Carnarvonshire .....	The Hon. F. M. L. Mostyn, of Plas Hen Williams & Breese, Pwllheli .....	Dep. Williams & Co., 38, Hatton Garden.
Denbighshire .....	T. Maiwarin, of Marchwell Hall, Esq. { C. Townshend, Wrexham—R. ....	Dep. William Dean, 16, Essex Street.
Flintshire .....	W. Shipley Conway, of Bodryddan, Esq. Charles Walter Wyatt, of St. Asaph	Dep. Bloxam & Co., 2, Lincoln's Inn Fields.
Merionethshire .....	George Price Lloyd, of Plasynedd, Esq. Williams & Breese, Pwllheli .....	Dep. Williams & Co., 38, Hatton Garden.
Montgomeryshire .....	Thomas Edmund Marsh, of Llanidloes Dep. E. S. Brigg, 38, Southampton Buildings.	

SOUTH WALES.

Breconshire .....	R. Douglas Gough, of Ynyscedwin, Esq. { J. Jackson Price.—H. Maybery, Esq. of Brecon, Acting U. S. ....	Dep. Gregory & Son, 12, Clement's Inn.
Cardiganshire .....	John Wm. Lewis, of Llanarchayron, Esq. Horatio Hughes, of Abergavenny .....	Dep. Hawkins & Co., 2, New Bowell Court.
Carmarthenshire .....	John Lloyd Price, of Glangwilly, Esq. .... John Budden Jeffries, of Carmarthen Dep. Clarke & Medcalf, 20, Lincoln's Inn Fields.	
Carmarthen (Co. of the Borough of) .....	John Powell Davis, Esq. .... P. G. Jones, of Carmarthen .....	Dep. Poole & Gamlen, Gray's Inn Square.
Glamorganshire .....	Michael Williams, of Morfa, Esq. .... Charles Basil Mansfield, of Swansea..	Dep. M. R. Young, 4, White Lion Court, Cornhill.
Pembrokeeshire .....	Richard Llewellyn, of Tregwynt, Esq. .... William Lock, of Tenby .....	Dep. Norris & Co., 19, Bartlett's Buildings.
Radnorshire .....	Edward Rogers, of Strange Park, Esq. .... T. S. Rogers, of Kington .....	Dep. Meredith & Reeve, 8, New Square, Lanc. Inn.

**[¶]** Warrants are granted in Town, except for Canterbury, the Cinque Ports, Southampton, and Curnarvon.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## MARRIED WOMAN.—SEPARATE ESTATE.

A testator gave his daughter, then unmarried, all his leasehold houses, all his monies, public stocks, and all his personal estate whatsoever, to her separate use, free from the control or debts of any husband she might marry; and he appointed her sole executrix of his will, which she proved, and then married; and by the marriage settlement part of the public stocks was vested in trustees for her separate use for life, remainder to the husband: Held, upon motion before the hearing of the cause, that no part of the property bequeathed, whether leasehold or moveable, was liable to the husband's debts; and an injunction was granted till the hearing.

The question in this case was, whether leasehold houses, and the furniture and other goods and chattels therein, which had been left by will to a single woman to her separate use, free from the control and debts of any husband she might marry, were liable to be taken in execution on a judgment obtained against her husband, whom she married after the date of the will and death of the testator, without making any settlement of this property. The will and other circumstances of the case are reported, *ante*, p. 123, on a motion before the Vice Chancellor for dissolving an injunction which had been granted *ex parte* in the wife's bill, to restrain the sheriff and judgment creditor from taking the goods &c. in execution. The Vice Chancellor refused that application, and ordered the injunction to be continued. An appeal motion was then made before the Lord Chancellor, who having then under consideration the case of *Tullett v. Armstrong*, and other cases involving this question among others, ordered the Vice Chancellor's order to be suspended, and that the sheriff should continue in possession of the property, but without selling until further order, leaving the plaintiff (the wife) at liberty to pay the amount of the judgment and costs into Court, or give security for them, in which case the sheriff might quit possession.<sup>a</sup> The sheriff then resumed, by his officers, the possession of the house, (No. 19, West Square, Surrey) and of the furniture, which he had quitted on the Vice Chancellor's order.

Mr. Wigram now moved for his Lordship's order to restore the injunction, observing, after stating the words of bequest from the will, that the leasehold houses and furniture, and all the property so bequeathed to this lady, were unquestionably her separate estate, and that this case came within the principle of his Lordship's late judgment in *Tullett v. Armstrong*.<sup>b</sup> The only doubt that could be raised by any argument on the other side, was

as to the furniture and effects in the house, whether they were part of the property bequeathed to the lady.

Mr. Russell, on the same side.—No point remained to be decided now, that was not decided in *Tullett v. Armstrong*. It seemed to be the opinion of the Vice Chancellor that in chattels and things moveable, being in the husband's possession, there could be no trust for the separate use of the wife, without the interposition of a third person as trustee, which certainly was wanting in this case. But that opinion was opposed to the numerous decided cases, and, among others, to the opinion expressed by Lord Eldon in *Lady Arundell v. Phipps*.<sup>c</sup> In this Court it made no difference whether there was such a trustee or not, the husband himself becomes a trustee for the wife in the absence of any other. There could be no pretence for saying that all this property was not the wife's separate estate, but it would be contended that as the husband was living with the wife, in the possession of the house and chattels, they became liable to his creditors.

Mr. Bethell, for Holmes, the judgment creditor, said, it did not appear by a published note<sup>d</sup> of this case when it was before the Court, that his Lordship expressed any opinion on the merits. The property in question was of a twofold description, being partly leasehold and partly moveable. All had been bequeathed by the testator to his daughter, who was at the date of the will and at the time of the testator's death, an unmarried woman, and who then had an unquestionable right to dispose of all the property. The testator added to his bequest, a clause that it "should not be liable to the control or interference in any way of any person or husband she may be married to." The question was, whether that clause created such a trust as excluded the marital right, where no third person was interposed, to support the distinction between legal and equitable ownership. There was no doubt that this Court holds that no trust shall fail for want of a trustee, and therefore the heir is sometimes held to be a trustee for some purposes, and so also in cases of gifts to the separate use of a married woman, though the law vests the legal ownership in the husband, yet equity holds him to be a trustee for her; *Bennett v. Davis*;<sup>e</sup> *Parker v. Brooke*.<sup>f</sup> These cases had no application to the present case, the first being a devise of freehold lands to a married woman and her heirs; the latter, a gift of leasehold premises also to a married woman for her life, and to her children after her death, and there being special clauses excluding the husband in each case; whereas, in the present case, property was given absolutely to a single woman, to become her separate estate on her marriage, the will not

<sup>a</sup> 10 Ves. 139; see p. 150.

<sup>b</sup> The report in the Leg. Obs. *ante*, p. 125. The same had been just handed up to his Lordship by Mr. Wigram.

<sup>c</sup> 1 P. Wms. 316.

<sup>d</sup> 9 Ves. 523.

<sup>a</sup> See the report *ante*, p. 125.

<sup>b</sup> *Ante*, p. 263.

creating any trust. The general rule was, that where a woman has moveable property over which she has absolute power of disposing, that property becomes the husband's by the marriage. With respect to leaseholds and choses in action belonging to the wife, the husband acquires, by the marriage, not the immediate possession of them, but a capacity to reduce them into possession. In *Anderson v. Anderson*,<sup>g</sup> a case in some respects like the present, the wife's separate estate was held to be confined to the leasehold property, and not to include the furniture and other effects in the house, although they had been purchased by the wife out of the bequest to her to her separate use before her marriage. (The learned counsel upon reading the report, admitted that the case was not so much in favor of his argument as he had supposed, but he submitted that it was not against him.) In the present case, the husband appeared to the world to be the owner of the house and furniture; he dwelt in it with his wife, and was complete master of it, to all appearance. The sheriff had not any notice of a trust for the wife when he took the goods in execution under the other defendant's judgment.

*The Lord Chancellor.*—Judgment and execution do not bind trust property, and there are numerous cases in bankruptcy where they have no such effect.

*Mr. Bethell.*—Though not in bankruptcy, yet generally they were allowed to have a binding effect. If the doctrine of protecting trust property was to be extended to concealed trusts between husband and wife, it would open a wide door to fraud, for which such facility would be afforded in cases where no trustees are interposed.

*The Lord Chancellor.*—As to concealment, the same might happen even where there are trustees; the creditors could not or might not know of the trust. I do not know what case may be made at the hearing of the cause, but it appears to me at present, according to the doctrine laid down in *Tullett v. Armstrong*, that this is a trust for the wife's separate use. The principle of my decision there was, that any man marrying a woman having property to her separate use, and no settlement being made of it, must take it as he finds it; that a trust for the wife's separate use attaches on it on the marriage, and continues during the coverture. If this plaintiff had been married before the testator's death, the husband clearly could not take the property, but whether any act was done by the wife before the marriage to give the property to the husband, was another matter, which would appear at the hearing, depending also on the settlement that was executed.

*Mr. Bethell.*—That settlement gave nothing to the wife that she had not before; but it gave the husband an interest in 6000*l.* bank stock, part of the property left to the lady, and it was silent as to the rest. The wife might at any time transfer any part of the property to her husband. The moveable property required no

act of the wife to give it, for marriage gives it. In this and other points of view, this case was distinguishable from that of *Tullett v. Armstrong*.

*Mr. Paynter* for the sheriff, said he was ready to submit to any order the Court would be pleased to make.

*The Lord Chancellor.*—The principle is, that when property is given to a woman for her separate use, upon her subsequent marriage, a trust attaches on that property for her use during the coverture. At present, he could not say whether such was the case here, but he suggested an inquiry before the master to ascertain how much, if any, of the property seized by the sheriff and now in his possession, was the property left to the plaintiff by her father's will, and also (on Mr. Wigram's suggestion,) how much of it was purchased by the wife by the property so left to her.

*Mr. Wigram.*—And the sheriff ought to withdraw, as the leasehold houses are ample security for the debt, and it is not likely the plaintiff will remove the property, or any part of it, during the proposed inquiry. According to the evidence now before the Court, all the property was the wife's.

*The Lord Chancellor.*—I cannot remove the sheriff's officer, nor say this is the wife's property. That is the subject for inquiry before the master.

*Mr. Wigram.*—We are ready to give a charge on the whole of the property, for so much as may be found by the master not to be the trust property of the wife.

*The Lord Chancellor.*—I cannot vary the former order.<sup>h</sup> The security must be for all that the judgment creditor and the sheriff may be entitled to,—the costs to be reserved to the hearing.

*Newlands v. Holmes and Paynter*, Sittings at Lincoln's Inn, February 28th, 1840.

### Queen's Bench.

[Before the Four Judges.]

#### POOR LAWS.

*The Poor Law Commissioners have no authority to issue to an incorporated union, formed under Gilbert's Act, an order, parts of which impose new duties on one of the officers of the union, and thus occasion a necessity for a new salary to be granted to him; and such order being bad as to part, and being an entire order, is bad as to the whole, and must be quashed.*

In this case a *certiorari* had been applied for to bring up an order of the Poor Law Commissioners, dated on the 13th of March, 1837, in order to quash the same, on the ground that it contained directions which the Commissioners had no right to give. The parts specially objected to were as follows—

"Besides the performance of the duties herein specified, with relation to the accounts of the incorporation, and the general observance and execution of all lawful orders, regu-

<sup>g</sup> See p. 125, ante.

lations, and instructions of the Poor Law Commissioners, and the guardians, the following shall be the particular duties of the several paid officers enumerated :”—

“The following shall be the duties of the clerk :”

“To prepare or superintend the preparation, and take measures for ensuring the prompt and correct return of all such statistical information and reports as may be required for the public service.”

“The pauper description book, which shall contain a statement of the names and description of all paupers in the incorporation, arranged according to their respective parishes; and particulars respecting them, according to the headings of the several columns in form numbered 9, that is to say, &c.”

The case was argued some time since, and the Court took time to consider the judgment. The facts of the case, and the arguments, are sufficiently referred to in the judgment.

Lord Denman delivered judgment in this case.—This corporation, which was a union of parishes for the relief of the poor, was formed under the 22 G. 3, c. 83; and the question here is, as to the authority of an order issued by the Poor Law Commissioners with respect to the corporation. It was said in the argument here, that the Poor Law Amendment Act expressly saved Gilbert's Act in all matters in which the regulations of the latter were not specifically altered by the former. Under Gilbert's Act the overseer is to pay from time to time to the treasurer of the united parishes, their due proportion and quota of the several expences attending the poor therein. The treasurer under that act is to disburse the money under the orders of the guardians, and the visitor is to examine and pass the accounts after they have been verified on oath by a justice of the peace; and he shall settle the accounts between the guardians and the treasurer if any dispute shall arise respecting the same. These are the provisions made under that act for the duty of auditing the accounts, and we cannot but think that the expenditure under such provisions might be inadequately watched. For under the provision respecting the settlement of the accounts between the guardians and the treasurer, if any dispute shall arise respecting the same, it is clear that so long as no dispute arises—so long as the guardians and treasurer are agreed,—the visitor has no right to interfere. And even when he does interfere in the case of a dispute between them, it does not appear that he has a right to do more than to ascertain the amount, and accurately settle the sum in dispute. So that he does not appear under that act to have any control over the overseer with whom the expenditure originates, as to the nature of that expenditure. But whatever we may think of the sufficiency of these powers of the visitor under that act to regulate the charges upon the funds of the parish, it seems to be admitted that a necessity has arisen for an inspection and auditing of the parish accounts in such a manner as the visitor under that act had no

right to make. If, therefore, the Poor Law Commissioners had a right to appoint, as they have, an inspector, they had no right to appoint him for the purpose, among other things, of inspecting the accounts. There is nothing in such a right of appointment inconsistent with the provisions of Gilbert's Act. The guardians are indeed subjected to a new control, but that arises from the declared necessity of auditing the accounts. The visitor may discharge his duties under the old act, but the auditor is specially appointed by the new act to perform duties of a new, but not of an inconsistent kind. The order of the Poor Law Commissioners is therefore free from objection on this head. Then it is stated to be necessary to have the assistance of an intelligent clerk, to do what the commissioners require. The treasurer now performs all the duties at present required in that office. His duties under Gilbert's Act were confined to the receipt and expenditure of money; and some notion may be formed of the limited nature of those duties, when we recollect that his salary is fixed by the 12th section of that act, to the small sum of 10*l.* per annum. The commissioners may, no doubt, appoint an auditor to perform, in a better manner, the old duties of the visitor, but by their order other duties are now imposed upon him—duties which appear to us to go beyond the limits of the power of the Poor Law Commissioners under the recent act; and it is not suggested that they derive any authority in this matter from any other source. It may be very proper to take measures to ensure correct returns of all such statistical reports as the commissioners may deem it requisite to possess for the public service. This may be a very desirable matter, but this new labour must be paid for: that, therefore, would be a new expense, and the commissioners have no right to impose such new expense on a parish; and the benefit is too remote to be considered as rendering the matter as one within their jurisdiction, as coming within the necessary regulations for the administration of relief to the poor. That part of the order, therefore, (and the order is entire) is, in our opinion, beyond the power of the commissioners to make, and the order itself cannot consequently be supported, because, being an entire order, and one part being bad, the whole becomes invalid. We have pointed out all these matters in order to show how far their authority can be legally and properly exercised without inconvenience. It does so happen here that in this particular case their authority has been exceeded. The order, therefore, must be quashed.

*The Queen v. The Poor Law Commissioners, in the matter of the Allstonefield Incorporation, H. T. 1840. Q. B. F. J.*

#### Common Pleas.

EXECUTION OF POWER.—POLICY OF INSURANCE.—PAYMENT OF PREMIUMS.—PRINCIPAL AND AGENT.

Directions from an assured to two persons to effect a life-policy in their own names; as

not authorize them to effect it in their own name and that of another, so as to charge the assured with the premium paid.

*Watson* shewed cause against a rule nisi obtained by *Kelly* for a nonsuit. It was an action of assumpsit for money paid, and on an account stated, to which the defendant pleaded non-assumpsit. It appeared from the affidavit that the plaintiff and his deceased partner *Stewart*, had been navy agents, and in that capacity had been employed by the defendant. On the 26th April, 1832, the defendant being indebted to the plaintiff and *Stewart*, wrote them a letter, in which, after stating that he had appeared before the directors of a life assurance office, he went on to say, "I request that you will effect an insurance on my life for 200*l.*, for seven years, and continue the payment of the premiums, as this insurance is for the purpose of securing my debt to you, you may have it effected in your own names, and it may be assigned to me in the event of your debt being satisfied." It appeared further, that in pursuance of the above instructions, a policy was effected on the defendant's life, which having been allowed to expire at the end of two years, was renewed in 1834 for the residue of the seven years; and it was for the premiums on this policy, which had been paid by the plaintiff and his deceased partner, that this action was brought. In order to support the plaintiff's case, the letter having been proved, the first policy was put in, to which there was a subscribing witness, who not being in attendance, it was proved he was kept away by illness, and the policy was read. The second policy was then put in, and it appeared that this had been taken in the names of *Barron*, *Stewart*, and *Smith*, the latter having been taken into the firm after the authority given by the defendant. It was objected that this policy was not warranted by the authority, and therefore that the plaintiff could not recover for payments made in respect of it.

*Watson* shewed cause, and contended that, as to the reception of the first policy in evidence, it was immaterial, the action not having been brought in respect of it. As to the other point, the plaintiff and *Stewart* were requested to pay the premiums on the first policy, and the second was granted on the surrender of the first; the policy was, at all events, on the life of the defendant. It was immaterial in whose name the policy was effected; the object of it was simply to secure a debt due to the firm, and to re-assign it to the defendant when that debt was satisfied. Suppose the insurance had not been kept up, and an action had been brought by the defendant, the damages must have fallen on the firm. The policy was renewed in names which effectuated the object of the defendant's order, and that was done with the money of the two partners. The jury by their verdict have found the authority to make the payments.

*Bompas*, Serjt., *Kelly* and *Petersdorff*, in support of the rule. This is not a question of agency, but of interest. *Stewart* and *Barron* were interested in the first policy, the debt

being due to them; it was therefore necessary to produce the first policy, and that has not been properly proved. On the second point, however, the defendant is clearly entitled to a nonsuit. They effect a policy in their own names and in the name of a stranger to the defendant. All authorities should be strictly pursued, Com. Dig. Attorney, c. 11, 13. This is an authority to do a particular act, and the plaintiff has exceeded it. *Attwood v. Mannings*,<sup>a</sup> and *Fenn v. Harrison*,<sup>b</sup> are decisive in favour of the defendant. Suppose the defendant's executor were sued for the debt, would payment to *Smith* be an answer? or, suppose *Smith* released the debt.

*Bosunquet*, J.—This is an action by a surviving partner, for premiums paid on a policy, which, it is alleged, was effected by the defendant's authority; the defendant authorized his agents to effect a policy in their own names for seven years. This policy is effected accordingly. At the end of two years it is suffered to lapse; in the mean time a new partner is taken in, and another policy is effected for the remaining portion of the time. The action is then brought for the premiums on the second policy, which was effected in the names of *Barron*, *Stewart* and *Smart*. A paper purporting to be a policy for seven years, was tendered in evidence to support the plaintiff's case, and the subscribing witness not being produced, it was alleged that he was ill. That excuse, however, was clearly insufficient; but it was further said that this policy was immaterial to the case. That question it is unnecessary to determine: the policy was received, and it is impossible to say that it did not influence the jury. It does not, however, distinctly appear that leave was reserved by the learned judge to enter a nonsuit on this point; and it therefore becomes necessary to consider the second question, which is this: it appearing that a policy is executed of a different description from that for which the original authority was given, was that in law authorized by the defendant? for if not, the money was not paid on account of the defendant. Could we say that the letter would authorize the agents to give the name of a different person as the person insured, and on that ground call upon the office to pay in the event of his death? If we could not, it seems in this case that there was no authority to effect the present policy; and it does not seem to have been adopted or recognized in any subsequent correspondence between the parties; but it is said, that if a policy was authorized by the defendant, any names might be used as the agents; and that the defendant could not be prejudiced by it. Is that clear? The case of death has already been put: so the case of a release, and many others might be given. It seems to me that there was no execution of the authority in terms or by construction.

*Erskine*, J.—I am of the same opinion. It may be said that the production of the first policy was not necessary; but it does

<sup>a</sup> 7 B. & C. 284.

<sup>b</sup> 3 T. Rep. 762.

not therefore follow that it did not influence the jury. On the second point, I am of opinion that there was no authority to effect this policy in the name of Smith. It is said that the defendant could not be prejudiced. I think he might. I will put only one case: if an action were brought by the plaintiffs for this money against the executors of the defendant, they could not set off any money which might be in the hands of Smith.

*Maule, J.*—On the first point, the document which was put in, had a strong bearing in the plaintiff's favor. Its being necessary or not is no test or criterion whether it was properly admitted or not: the plaintiff chose, at all events, to put it in. Besides, it is clear that it was the duty of the plaintiff to produce the policy, and shew that it was executed. On the other point, I think that it is clear that the money was not paid under the authority of the letter of 26th April, 1832. The provision was for the benefit of Barron and Stewart. It might not perhaps be necessary to construe it strictly or literally. I should have been disposed to have given it a construction that would have justified any names being introduced that were for the benefit of Barron and Stewart, if that could be done in such a way as to make no difference to the defendant. That was not the case here. The new name introduced might have varied the defendant's situation altogether.

Rule discharged.—*Barron, surviving partner of Stewart, v. Fitzgerald, H. T. 1840.* C. P.

## NEW RULE IN THE COMMON LAW COURTS.

### FORMS OF WRITS OF CA. SA.

*Hilary Term, 3d Victoria, 1840.*

IT IS ORDERED, That the following forms of writs, framed by the Judges pursuant to the statute 1 & 2 Victoria, c. 110, s. 20, be used from and after the first day of next Easter term, in the cases to which they are applicable, with such alterations as the nature of the action, the description of the Court in which the action is depending, the character of the parties, or the circumstances of the case may render necessary; and that in all cases in which the judgment is for a penalty and the plaintiff seeks to obtain interest, there shall be a memorandum on the back, or at the foot of the writ, directing the sheriff to levy the amount of the sum of money really due and secured by the penalty, and of the damages and costs recovered, and interest thereon at the rate of four pounds per centum per annum from the time when the judgment was entered up, or if it was entered up before the first of October, 1838, then from that day; and, that in the cases

in which the amount for which the judgment has been given is less than the amount of the sum of money really due and secured by the penalty and the damages and costs recovered, and the interest thereon calculated as aforesaid, it shall be stated in the body of the writ, that the sheriff is to levy interest at the rate of four pounds per centum per annum from the — day of —, and on the back, or at the foot of the writ, there shall be a memorandum as above directed; and, that in the case of an assessment of further damages under a writ of *scire facias* pursuant to the statute of 8 & 9 William 3, it shall be stated in the body of the writ of execution, that the sheriff is to levy interest on the damages assessed and costs taxed in that behalf at the rate of four pounds per centum per annum from the day on which execution was awarded, unless execution was awarded before the first of October, 1838, and in that case from that day:—**BUT IT IS FURTHER ORDERED**, that any variance not being in matter of substance, shall not affect the validity of the writs sued out.

[The forms of the writs will be given in the next number.]

## THE EDITOR'S LETTER BOX.

The only important alteration in our List of *Law Bills* since last week, is, that a bill is to be brought in "to give summary protection to persons employed in the publication of Parliamentary Papers."

The Questions at the Winter Examination in the Faculty of Laws at University College, London, will probably be inserted in our next Number.

The letter of "A London Attorney" shall be inserted.

We are informed that in our List of Barristers called for Hilary Term, 1840, we have omitted the name of Henry Villiers Billinghurst Taylor. This gentleman was called by the Middle Temple on the 17th January, 1840; and Mr. Winter was called on the 24th.

A correspondent inquires whether it is the practice of country solicitors to pay their clerks the commissioners' fee of 13s. 4d. upon taking chancery answers, whenever they are named in a commission, and if not, why not?

The valuable communication of "Ebor" is printed, and shall speedily be inserted.

*Erratum.*—p. 301, as to the power of Judges to stay proceedings, for "now" read "no."

Several Numbers of this work having been reprinted, imperfect sets may at present be completed.—The full price will be given by our publisher for any of the following Numbers, viz. 338, 340, 341, 397.

# The Legal Observer.

SATURDAY, MARCH 14, 1840. .

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PRIVILEGE BILL.

We have hitherto abstained from taking any active part in the discussion which has now occupied so much of the attention of the profession and the public for the last three years, with respect to the privileges of the House of Commons, and we only now advert to it because it has at last assumed a practical form in the shape of the bill brought into the House of Commons by Lord John Russell, “to give summary protection to persons employed in the publication of parliamentary papers.” In common with the great majority of the House of Commons, we approve of this step, and we trust that it will lead to a satisfactory adjustment of the present differences between the Courts of Law and the House of Commons, which every one must deplore. The disputed points have been somewhat narrowed of late. The greatest legal authorities in the House of Commons, the Attorney and Solicitor General, the Lord Advocate, &c. on the one side, and Sir William Follett, Sir F. Pollock, and Sir Edward Sugden on the other, are agreed that in the particular case the publication by Messrs. Hansard of the Report of the Inspectors of Prisons was justifiable; and should have been privileged; but these latter learned persons have stoutly maintained that the imprisonment of the sheriffs and the legal advisers<sup>a</sup> of Stockdale was not so, under the circumstances; and it will be conceded by all that nothing but the extreme necessity of the case could justify their detention for one moment. Let us consider, therefore, the remedy proposed by the present bill.

It recites that it is essential to the due and effectual exercise of the functions and duties of parliament, and to the promotion of wise legislation, that no obstructions should exist to the publication of such of its reports, votes, and proceedings, as either House of Parliament may deem fit to be published; and it enacts that where any person is sued or prosecuted civilly or criminally for the publication of any report, votes, or proceedings, under the authority of either House of Parliament, such person may leave at the office of the Court wherein any such suit or proceeding is commenced, or with the officer whose duty it may be to sign such judgment, a certificate under the hand of the Lord Chancellor, &c. or the Speaker of the House of Lords, or the Clerk of Parliament, or of the Speaker of the House of Commons, or the Chief Clerk of the same House, stating that such civil or criminal proceeding is commenced in respect of the publication of reports, votes, or proceedings, by authority of the House of Lords, or of the House of Commons; and after the delivery of such certificate “no proceeding, writ, or process whatever, shall be had, executed, or prosecuted, in such civil or criminal proceeding; but the same civil or criminal proceeding, writ, and process, whether heretofore commenced, prosecuted or issued, or hereafter to be commenced, &c. shall be taken to be finally concluded, determined, and superseded.” By sect. 2, proceedings against persons acting under warrants granted by the Speaker of the House of Commons during the present session of parliament, are stopped; and by sect. 3, the act is not to affect the privileges of parliament.

The bill was read a second time on Monday last, and will pass the House of Commons without any serious opposition.

2 C

<sup>a</sup> See p. 377, post, for a report of the meeting of attorneys.

We have received the following suggestion for the amendment of the bill from a learned correspondent :—

It seems to me the common law remedy of the subject for a libel in the Queen's Courts is likely to be seriously affected; and it is only fair that if the Courts are not to do justice, that a remedy should at least be provided by the New Privilege Bill.

Seeing also that a breach of privilege may have its origin in libellous matter improperly introduced by witnesses in depositions before committees of the House, and printed in their reports, and circulated throughout the empire, by which libellous matter a subject may be seriously injured, and such matter in all fairness and justice ought in many cases to be expunged, I beg to propose a new clause to the Privilege Bill, that on petition to the House from the injured party, the House, anxious that nobody should be wronged without a remedy, will consider such petition; and if the same be expedient and just, and not against the privileges of the House, they will direct the same to be expunged accordingly.

The following is the proposed clause :—

Whereas in some cases serious and grievous injury may arise to individuals by libellous matter being improperly introduced by witnesses in depositions before the committees of the House, printed in the reports of the House, and circulated throughout the empire; and whereas in justice to such persons so aggrieved as aforesaid, such matter ought to be expunged; be it enacted, &c. that on petition to the House of Commons by such injured party, the said House will consider such petition, and if the prayer of such petition be expedient and just, and not against the privileges of the House, the said House will expunge the same accordingly; and if just and expedient, will allow such injured party to proceed, and such person is hereby authorised to proceed by action against the libeller, and recover damages and costs.

#### PRECEDENCY OF PRINCE ALBERT.

In last Friday's Gazette appears the following announcement: "March 5.—Her Majesty has been pleased to declare and ordain that Field Marshal His Royal Highness Francis Albert, &c. Duke of Saxe Coburg and Gotha, K. G., Her Majesty's Consort, shall henceforth upon all occasions, and in all meetings, except where otherwise provided by act of parliament, have, hold and enjoy place, pre-eminence, and precedence, next to her Majesty." This announcement is in accordance with the view which we have already taken of this subject,\* and will, as we think, meet the convenience of the case. This royal warrant or declara-

tion leaves the question unsettled, as to the precedence of the Prince in the House of Lords or in the Privy Council; but it will give his Royal Highness rank next to the Queen every where else, "at ceremonials of every description, at royal marriages, christenings or funerals, at banquets, processions, and courtly receptions, at installations and investitures, at all religious, civil, or military celebrations, upon all occasions, formal or social, public or private," (see *ante*, p. 308), during the life of her Majesty. Prince Albert will therefore, on all such occasions, rank before both heirs apparent and heirs presumptive to the throne. Then as to the doubtful cases: we presume it is not the intention of the prince to accept a peerage, and if so, precedence in the House of Lords is of no consequence to him: it is, however, probable that he will be created a Privy Councillor; but here, on all ordinary occasions, he would stand next to her Majesty. This is clearly shown by a good authority on this point.

"If the Queen, therefore, should be advised to grant to her Royal Consort letters patent of precedence immediately next to her own person, and at the same time make him a Privy Councillor, there would be no practical difficulty with regard to his place at the council board, notwithstanding the legal exception; there custom has in a great measure superseded law. The occasions are very rare when any of the Royal Dukes are present; and upon all others, the prince would sit upon the right hand of her Majesty, and precedence would be conceded to him, as a matter of course. The council board is no longer what it was in the days of Henry 8; at which time the king sat there regularly in person. The greater part of the Privy Councillors were in constant attendance upon him. (Sir H. Nicolas' Preface to Council Register, vol. 1, p. 13) They resided in the Court, and accompanied him wherever he went; much (though far from all) of the most important business of the state was transacted there, and the order of sitting when the members had to deliver their opinions *seriatim*, beginning with the lowest, was not important. Councils are now merely formal assemblies, for the expedition of certain orders, which must emanate from the sovereign in person. When any of the Royal Dukes are present, they sit next the Queen on her right hand, the Lord President always next her on her left. And although the Lord President, and the Chancellor, when present, sit on either side of the Queen, all the other officers are indiscriminately placed. It would not, probably, be deemed advisable to go back to the end of the seventeenth century for a precedent, or it would be found that Prince George of Denmark sat in council without taking any oaths; not, therefore, as a Privy Councillor, but *pro honoris causa*. He always,

\* See *ante*, p. 273, 307.

however, occupied the place of honor, and his attendance was very regular, though there is no record of his having ever taken the oaths; and at the accession of king William, when all the Privy Councillors were sworn, it is expressly stated that Prince George was not. He was first brought into council by James 2d, in person, and placed on his right hand, but not sworn." *The Precedence Question*, pp. 22, 23.

## ON THE PRACTICE OF RETAINERS.

This is a subject of great practical interest to the profession, and an opinion we are enabled to lay before our readers affords us an opportunity of making some observations on the subject, of which we shall avail ourselves.

The following circumstances have lately occurred in a cause at the Rolls. The plaintiff gave a special retainer to Mr. Pemberton. One of the defendants afterwards gave the usual notice to dismiss for want of prosecution. The plaintiffs on this motion gave a motion-paper to Mr. Hetherington, their junior counsel, to undertake to speed; giving of course, no brief to Mr. Pemberton on the occasion. On this, the defendant contending that the plaintiff's retainer was *ipso facto* gone, gave a retainer to Mr. Pemberton for the defendant. The cause lately coming into the paper, the question of retainer had to be decided, and a case was prepared, and by Mr. Pemberton submitted to Mr. Knight Bruce, whose opinion was in the following words:—

"An appearance for a plaintiff on a defendant's notice of motion to dismiss the bill is materially different, I apprehend, from a motion of course."

"It must depend on the circumstances of the particular case whether the motion to dismiss ought to be granted, or if refused, upon what terms; and although it happened in the present instance that the motion was to be met, and was met by an undertaking to speed, and that only, I think the case must be treated for the present purpose in the same way as if an opposition of a different character had been offered. The kind of defence can create no distinction. It seems to me that the plaintiff's retainer was lost, and that the defendant, who retained Mr. Pemberton on the 19th ult., is the party whose brief Mr. Pemberton should hold on the hearing."

"T. KNIGHT BRUCE."

5th March, 1840.

The case stated that a fee of a guinea had actually been given with the motion-pa-

per to Mr. Hetherington, but that it was so given by mistake, the usual fee being stated by the Clerks in Court to be half-a-guinea only. It will be seen that the opinion of Mr. Knight Bruce treats this fact as immaterial, and had it been otherwise it can hardly be considered that the mere fact of paying a larger fee than the practice warranted could have affected the question at issue. The question in truth was, whether a party who has given a retainer loses the benefit of such retainer by omitting to give the counsel retained a brief on a motion, which is a usual half guinea brief.

On the question so stated, Mr. K. Bruce's opinion is not only in the affirmative, but making the nature of the opposite party's motion the test of the obligation of the retaining party to give a leading brief; it in fact affirms that upon every application to which a defence may on any supposed case be set up, and in spite of their being in fact no ground or intention to raise any defence at all, the retaining party is nevertheless bound to give a brief for no other cause than to preserve his retainer. This proposition, stated in other words, is that on every application before the Court there must either be an actual brief delivered, or a fresh retainer given.

Now leaving the above rule to have its own effect on the common sense of mankind, both in the profession and out of it, let us consider for a moment a little of the theory of the doctrine or practice of retainer.

In the obscurity in which the origin of the practice is involved we may well be permitted to speculate upon its having originated in the delivery of the brief itself. On parties becoming involved in litigation, and desiring to have the benefit of some known and efficient counsel, the first thing he would do would be to get his brief up hastily, and deliver it first, so as to outstrip his adversary. Haste would beget, first, defectiveness in the brief; next, a formal brief merely; and lastly, a mere skeleton brief—or, *retainer*—but the effect and reasoning would be the same—the counsel holds his brief, or retainer, and his services in the cause are secured.

But what services? One would suppose such services as the party retaining might need—not that the retainer would be a burthen rather than benefit, and compel him to take the services when no need of any existed; or, as in the present case, to compel him to pay fees thrice as large as the services justified or the practice warranted! And it is not to be forgotten that the agreed effect of a retainer is only to entitle the

party giving it to notice of performance. If the opposite party give or tender a brief, it is quite agreed that the retainer can only be sustained by the party actually giving a brief, but the rule now laid down makes the non-delivery of a brief, whether the opposite party tenders one or not, *ipso facto* an abandonment of the retainer given, without the least ground for any presumed intention to such effect.

There is another point in which this rule as to retainers may be considered, and that is, as it affects the interest and opportunity of advancement of the junior members of the bar; and it is only matter of surprise that they have not long since taken it up; it is well known that it is not overlooked by them.

If neither the high-minded leaders of the bar, nor the self-interest of their junior brethren will save us from this special pleading, in which the above rules tend to involve all branches of the profession, it will behove the solicitors to take the matter into their own hands, and in their hands the evil seems to admit of an easy remedy. Let the profession but determine amongst themselves to consider a retainer once given as good during the continuance of the cause, and an end would thus at once be put to these "nice points" on the neglect of retainers, the only effect of which is to increase outlay and loss, and to encumber the profession with additional rules for the benefit of those who may delight in "sharp practice."

It is true that such a rule would be found difficult to be acted upon in all cases, and might be restricted in practice to causes between respectable offices (where indeed, we believe, it is very much acted upon at present) but this would remedy more than half the evil; and the remedy might be still further extended by an understanding between the parties that in each particular cause and at the commencement thereof, as soon as a retainer was given, its effect should be considered agreed upon as above.

We may return to this matter on a future occasion.

#### TRUSTS FOR SEPARATE USE.

Sir,

On reading your observations in p. 275, *ante*, wherein you say "we hold that when the marriage takes place, it (the trust for separate use) will become effectual whether the clause against anticipation be inserted or not." I was

struck with what appeared to me a confounding of the two cases of a *trust for separate use only*, and a *trust for separate use without power of alienation*—and I was in a great measure led to form this opinion by your immediately preceding observations. On the whole, however, after consideration, and by rejecting the words from "whether, &c." as surplusage, I came to the conclusion that your meaning simply was, that a trust for separate use was valid during a future coverture.

But on perusing in page 313, your remarks of acquiescence upon the letter of your correspondent H. B., I cannot view them in any other light than as a confirmation of my first impression, that you were confounding the two distinct cases I have mentioned—and, subject to your correction, I must consider your opinion to be, that a trust for separate use cannot exist during coverture, unless it is protected by a restraint on anticipation,—and that if not so expressly protected, the restraint will nevertheless attach as a matter of course, for after having said in p. 275, what I have before mentioned—you say in p. 313, "We intended to have said whether the clause against *alienation* be inserted or not, i. e. the gift over in that event to some other person. In the case of *Tullett v. Armstrong*, *ante*, p. 264, it will be seen that 'the second gift under the first will, was not accompanied with the restraint on alienation,' although in other gifts by the same testator there was this restraint, and the *Lord Chancellor* held that this made no difference,"<sup>a</sup> but that 'if separate estate was to be supported, it must be supported on both branches.'

In venturing to question the correctness of your opinion, and that of H. B. as to the effect of the recent decision in *Tullett v. Armstrong*, I would first beg to call your attention to the state of the decisions at the time of the *Lord Chancellor's judgment* in that case.

In *Newton v. Reid*,<sup>b</sup> the *Vice Chancellor* had decided that a *restraint on alienation* attached to a trust for separate use did not extend to future coverture; but in *Benson v. Benson*,<sup>c</sup> and *Davies v. Thornycroft*,<sup>d</sup> he expressly said that he considered the question of the validity of *trusts for separate use* untouched by that decision, and he decided the latter case in favour of the validity of such a trust during a subsequent coverture. *Lord Collegham's observations* in *Massey v. Parker*,<sup>e</sup> (which was a case of *separate use*,) were grounded upon the doctrine of *Newton v. Reid*, (a case of *restraint on alienation*) it not having at that time occurred to him, "that the separate estate could survive to a subsequent coverture, stripped of the protection which the prohibition against anticipation gives to it, and which alone, in many cases, prevents it from being an evil rather than a benefit to the wife," (see his Lordship's observations in *Tullett v. Armstrong*.) But it may also be observed that his

<sup>a</sup> Where does the *Lord Choncellor* say this?

<sup>b</sup> 4 Sim. 141.

<sup>c</sup> 6 Sim. 126.

<sup>d</sup> *Ibid.* 420.

<sup>e</sup> 2 M. & K. 174.

Lordship decided *Stiffe v. Everitt*,<sup>f</sup> (a case of restraint on alienation) contrary to that of *Newton v. Reid*.

But his Lordship, at the commencement of his judgment in *Tullett v. Armstrong*, says as follows: "The question in this case is as to the clause against anticipation—but I agree with the Master of the Rolls in thinking it not only embraces the question of separate estate, which has been the subject of much discussion, but that these two questions are identical as to the principles which must regulate the decisions upon them; by which I mean, if the case be of a *separate estate without power of anticipation*, it must exist with that qualification, if it exist at all; and there is no principle upon which it can be held that the separate estate operates during a coverture subsequent to the gift, but the prohibition against anticipation with which the gift was qualified, does not."

Here, as well as in the sentence you quote, "that if separate estate is to be supported, it must be supported on both branches," it is obvious that his Lordship is referring to *trusts for separate estate without power of anticipation*, and it cannot be inferred that he meant to say that a *trust for separate use* is invalid during coverture, unless it is accompanied by a restraint on alienation, but that where the two have been joined together, one cannot exist unless the other does.

H. B., in support of his opinion, quotes the following observations of the *Lord Chancellor*:—"After the most anxious consideration, I have come to the conclusion that the jurisdiction which this Court has assumed in similar cases, justifies it in extending it to the protection of the *separate estate, with its qualifications and restrictions attached to it*, throughout the subsequent coverture, &c." But his Lordship is evidently here again referring to *trusts for separate use, accompanied by a restraint on alienation*; and when he talks of protecting the *separate estate with its qualifications and restrictions attached to it*, he is overruling the opinion expressed by the *Vice Chancellor* in *Davies v. Thornycroft*, "that although the prohibition against anticipation cannot operate during a subsequent coverture, the property may maintain its quality of separate estate."

In support of the view I take that a trust for separate use, not accompanied by a restraint on alienation, is valid during a subsequent coverture as against the marital rights of the husband, I would refer you to the cases of *Jacobs v. Amyatt*,<sup>g</sup> *Anderson v. Anderson*,<sup>h</sup> *Simson v. Jones*,<sup>i</sup> *Davies v. Thornycroft*,<sup>k</sup> *Johnson v. Johnson*,<sup>l</sup> and the more recent decision of the Master of the Rolls in *Scarborough v. Borman* affirmed by the *Lord Chancellor* on appeal along with *Tullett v. Armstrong*.<sup>m</sup> But I also hold that property so held, may be

alienated by the wife during her coverture, (see the observations of *Lord Cottenham* immediately following the sentence quoted by H. B.; also *Fettiplace v. Gorges*,<sup>n</sup> *Parkes v. White*,<sup>o</sup> *Master v. Hobbs*,<sup>p</sup> and *Tullett v. Armstrong*, as to the second devise in the will, where there were no words prohibiting alienation,) even to her husband. *Pybus v. Smith*.<sup>r</sup>

I beg to apologize for the length of these remarks, but I have been unable to shorten them so as to express my meaning fully, and still further apologies will be due if I should have misunderstood your observations.

EBOB.

P.S. I venture to suggest whether you are not attributing different meanings to the words *anticipation* and *alienation*, which in these cases are undoubtedly synonymous.

[If we have ever been inadvertently led to a wrong conclusion or statement, our readers will, we think, do us the justice to say that we have always been ready to correct it as soon as possible; and on the present occasion we should have an additional pleasure in doing this to so courteous a correspondent as "Ebor," but having attentively read his letter and our own observations, we cannot understand how he has been led to suppose that we are "of opinion that a trust for separate use cannot exist during coverture, unless it is protected by a restraint on anticipation." Not entertaining this opinion, it would be rather hard on us to be called on to support it; but as a full discussion upon every part of this question will be useful, we readily insert this letter, and invite attention to the following propositions of our correspondent. ED.]

#### *As to trusts for separate use.*

1st. That a trust for the separate use of a *feme covert*, during a then existing coverture only is valid during that coverture (*Bennet v. Davis*),<sup>s</sup> but ceases when it is determined. *Benson v. Benson*.<sup>t</sup>

2d. That a trust for the separate use of a *feme covert* during her present or any future coverture, is valid during such future coverture, *Beable v. Dodd*.<sup>u</sup> N.B. The cases mentioned in the next proposition, will apply also to this case.

3d. That a trust for the separate use of a *feme sole* during a future coverture is valid. *Jacobs v. Amyatt*,<sup>v</sup> *Countess of Strathmore v.*

<sup>n</sup> 3 B. C. C. 8.

<sup>o</sup> 11 Ves. 209.

<sup>p</sup> 13 Leg. Obs. 186.

<sup>q</sup> You quote the decision upon this point as if it confirmed your view that a separate estate must, during coverture, be inalienable; but it has quite a contrary effect.

<sup>r</sup> 1 Ves. 189.

<sup>s</sup> 2 P. Wins. 316.

<sup>t</sup> 6 Sim. 126.

<sup>u</sup> 1 D. & E. 193.

<sup>v</sup> 1 Madd. 376 n.

<sup>f</sup> 11 Leg. Obs. 305. <sup>g</sup> 1 Madd. 376 n.

<sup>h</sup> 2 M. & K. 427.

<sup>i</sup> 2 R. & M. 365.

<sup>k</sup> 6 Sim. 420.

<sup>l</sup> 14 Leg. Obs. 195.

<sup>m</sup> 19 Leg. Obs. 263.

*Bowes,*<sup>w</sup> *Anderson v. Anderson,*<sup>x</sup> *Simson v. Jones,*<sup>y</sup> *Davies v. Thornycroft,*<sup>z</sup> *Johnson v. Johnson,*<sup>a</sup> *Scarborough v. Borman.*<sup>b</sup>

4th. That a fund settled for separate use only, and not protected by a restraint on alienation, may be disposed of during either dis- coverture (*Acton v. White*),<sup>c</sup> or coverture, (*Fettiplace v. Gorges*,<sup>d</sup> *Parkes v. White*,<sup>e</sup> *Maher v. Hobbs*,<sup>f</sup> *Tullett v. Armstrong*,<sup>g</sup>) and even to the husband. *Pybus v. Smith.*<sup>h</sup>

*As to restraints on alienation.*

5th. That a restraint on alienation by a *feme covert* during a then existing coverture, only is valid during that coverture, but ceases when it is determined. *Barton v. Briscoe.*<sup>i</sup>

6th. That a restraint on alienation by a *feme covert* during her present or any future coverture is inoperative after the present coverture is determined, and during the subsequent dis- coverture. *Jones v. Sulter.*<sup>j</sup> See *post*, Prop. 8.

7th. That a restraint on alienation by a *feme sole* during a future coverture, is inoperative during dis- coverture. *Woodmeston v. Walker,*<sup>k</sup> *Brown v. Pocock*, 1st case.<sup>l</sup>

8th. That a restraint on alienation by a *feme sole* during a future coverture, if the fund be not alienated during dis- coverture, is valid when the coverture takes place. *Stiffe v. Everett,*<sup>m</sup> *Tullett v. Armstrong.*<sup>n</sup> The same rule will of course apply to a *feme covert* who is similarly protected during a future coverture, becoming dis- covert, and afterwards mar- rying again.

## PRACTICAL POINTS OF GENERAL INTEREST.

### IMPRISONMENT FOR DEBT.

By the 1 & 2 Vic., c. 110, s. 7, it is enacted, that if a plaintiff in any action in any of her Majesty's superior Courts of Law at Westminster, in which the defendant is now liable to arrest, whether upon the order of a judge, or without such order, shall, by the affidavit of himself or of some other person shew to the satisfaction of a judge of one of the said su- perior courts, that such plaintiff has a cause of action against the defendant or defendants to the amount of £20 or upwards, or has sus- tained damages to that amount, and that there is probable cause for believing that the defendant or any one or more of the defendants is or are about to quit England, unless he or they

<sup>w</sup> 2 B. C. C. 345; and 2 Ves. 22.

<sup>x</sup> 2 M. & K. 427.

<sup>y</sup> 2 R. & M. 365.

<sup>z</sup> 6 Sim. 420.

<sup>a</sup> 14 Leg. Obs. 195.

<sup>b</sup> 19 L. O. 263.

<sup>c</sup> 1 S. & S. 429.

<sup>d</sup> 3 B. C. C. 8.

<sup>e</sup> 11 Ves. 209.

<sup>f</sup> 13 L. O. 186.

<sup>g</sup> 19 L. O. 263,—as to the second devise in the first will.

<sup>h</sup> 1 Ves. 189.

<sup>i</sup> Jacob, 603.

<sup>j</sup> 2 R. & M. 208.

<sup>k</sup> 2 R. & M. 197.

<sup>l</sup> Ibid. 210.

<sup>m</sup> 11 L. O. 305.

<sup>n</sup> 19 L. O. 263.

be forthwith apprehended, it should be law- ful for such judge, by a special order to direct that such defendant or defendants so about to quit England, shall be held to bail for such sum as such judge shall think fit, not exceed- ing the amount of the debt or damages; and thereupon it shall be lawful for such plaintiff, within the time which shall be expressed in such order, but not afterwards, to sue out one or more writ or writs of capias into one or more different counties, as the case may re- quire, against any such defendant, so directed to be held to bail, which writ of capias shall be in the form contained in the schedule to this act annexed, and shall bear date on the day on which the same shall be issued: provided al- ways, that the said writ of capias and all writs of execution to be issued out of the Superior Courts of Law at Westminster into the coun- ties palatine of Lancaster and Durham shall be directed to the chancellor of the county palatine of Lancaster, or his deputy there, or to the Chancellor of the county palatine of Durham, or his deputy there. And by section 7, it is enacted, that every prisoner who at the time appointed for the commencement of this act, shall be in custody upon mesne process for any debt or demand, and shall not have filed a petition to be discharged under the laws now in force for the relief of insolvent debtors, shall be entitled to his discharge upon entering a common appearance to the action. Provided nevertheless, that every such prisoner shall be liable to be detained, or after such discharge to be again arrested, by virtue of any such special order as aforesaid, at the suit of the plaintiff, at whose suit he was previously arrested, or of any other plaintiff.

In a recent case, Mr. Justice Coleridge held, that a mere suspicion that a defendant is about to leave England is not sufficient ground for making an order for his arrest or detention under this section of the statute.

"In considering this point [there were other points in this case,] I must treat the plaintiff as making an original application for the detainer or new arrest of the defendant. In either case it must be shewn to my satisfaction that there is reasonable cause to believe that the defendant is about to quit England, unless he is detained, or forthwith apprehended; and the facts on which such probability arises, should be stated in the affidavit. Without going into a detailed examination of the facts alleged on either side, it may be taken generally on the one hand, that there is some reason to believe that the defendant's absence from England, before proceedings commenced, was occasioned, or has been in part, at least, con- tinued, by a desire to avoid the plaintiff's suit; but on the other hand, it is sworn that the de- fendant has no intention to leave the country now; that his wife has come to reside with him in England; that he is arranging for the return of his children from abroad; that at the time of his arrest he was *bond fide* negotiating for the lease of a house in London; and lastly,

that in fact he had been here, and appeared in public from the 25th of April to the 17th of May, when he was arrested. Mr. Harvey (the plaintiff) has had the opportunity of examining into the truth of these statements of the defendant, and has not been able to contradict them, nor does he swear to any preparations which are now making on behalf of the defendant for leaving the country. If, therefore, I made the order prayed for, I should be proceeding at once only on a suspicion excited by previous conduct, against the direct oath of the party: this I think would be unreasonable. It may often happen, and in this case it may so happen, that the means of securing the debt may be lost by a refusal to order the arrest; the judge may wait for evidence of a design to leave the country, till it is too late to prevent its accomplishment; but still he must deal with the act as he finds it worded. Its general intent is to abolish arrests on mesne process. The cases provided for by the 3d and 7th sections are but exceptions, and he must see the case fairly brought within them. I cannot say the evidence satisfies me of Mr. O'Meara's (the defendant's) present intention to leave the country, and therefore, on these affidavits, should refuse to make the order at chambers.

*Harvey v. O'Meara, 7 Dowl. 725.*

## NEW FORMS OF WRITS.

The following are the new forms of writs framed by the Judges, pursuant to the statute 1 and 2 Victoria, cap. 110. They will come into operation the first day of next term.

### No. I.

*Writ of Capias ad Satisfaciendum*, on a judgment in the Court of Queen's Bench, in an action of assumpsit.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith;—To the Sheriff of —, greeting. We command you that you take *C. D.* if he shall be found in your bailiwick and him safely keep, so that you may have his body before us at Westminster, immediately after the execution hereof, to satisfy *A. B.* £— which the said *A. B.* lately in our Court before us at Westminster, recovered against the said *C. D.* for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record, together with interest upon the said sum of £—, at the rate of four pounds per centum per annum, from the — day of —, in the year of our Lord —, on which day the judg-

\* The day on which the judgment was entered up, or if entered up prior to the 1st of October, 1833, say "from the 1st day of October, in the year of our Lord 1833," omitting

ment aforesaid was entered up, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the — day of —, in the year of our Lord —.

NOTE.—This and all other writs of execution may be made returnable on a day certain in term.

### No. II.

*Writ of Capias ad Satisfaciendum*, on an order of the Court of Queen's Bench, for payment of money.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith;—To the Sheriff of —, greeting. We command you that you take *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster, immediately after the execution hereof, to satisfy *A. B.* £—, which lately in our Court before us at Westminster, by a rule of our said Court, entitled, &c., [as the case may be], were by the said Court ordered to be paid by the said *C. D.* to the said *A. B.*, and further to satisfy the said *A. B.* interest upon the said sum of £—, at the rate of four pounds per centum per annum from the — day of —, in the year of our Lord —, b on which day the said rule was made, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the — day of —, in the year of our Lord —.

### No. III.

*Writ of Capias ad Satisfaciendum*, on an order of the Court of Queen's Bench, for payment of money and costs.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; To the Sheriff of —, greeting. We command you that you take *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster, immediately after the execution hereof, to satisfy *A. B.* £—, which lately in our Court before us at Westminster, by a rule of our said Court, entitled, &c. [as the case may be], were by the said Court ordered to be paid by the said *C. D.* to the said *A. B.*, together with the costs of the said rule, which said costs were afterwards on the — day of — in the year of our Lord — taxed and allowed by our said Court, at the sum of £—, and further to satisfy the said *C. D.*, the said sum of £—, c together with interest upon the said two several sums of £— and £—, at the rate of four pounds per centum per annum, from the said — day

the words on "which day the judgment aforesaid was entered up."

b The day on which the rule was made, or if it were made prior to the 1st of October, 1833, say "from the 1st day of October, in the year of our Lord 1833," omitting the words "on which day the said rule was made."

c The amount of the costs taxed.

of — in the year of our Lord —,<sup>d</sup> and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the — day of —, in the year of our Lord —.

#### No. IV.

*Writ of Capias ad Satisfaciendum*, on a judgment in an inferior Court in an action of assumpsit, removed into the Court of Queen's Bench.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; To the Sheriff of —, greeting. We command you that you take C. D. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster, immediately after the execution hereof, to satisfy A. B. £—, which the said A. B. lately in [insert the style of the Court], by the judgment of the said Court recovered against the said C. D. for his damages which he had sustained as well on occasion of the not performing certain promises and undertakings then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted as appears to us of record, and which judgment was afterwards on the — day of —, in the year of our Lord —, removed into our Court before us at Westminster by virtue of an order of our said Court before us at Westminster, [or of —, one of the Justices of our said Court, before us at Westminster, as the case may be], in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said order, and upon the said removal were on the — day of —, in the year of our Lord —, taxed and allowed by our said Court before us at Westminster, at the sum of £—, and further to satisfy the said A. B. the said sum of £—<sup>e</sup> together with interest upon the said two several sums of £— and £—, at the rate of four pounds per centum per annum, from the said — day of —, in the year of our Lord —,<sup>f</sup> and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the — day of —, in the year of our Lord —.

#### No. V.

*Writ of Capias ad Satisfaciendum*, on an order of an inferior Court for payment of money, removed into the Court of Queen's Bench.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; To the Sheriff of —, greeting. We command you that you take

<sup>d</sup> The day on which the costs of the rule were taxed, or if that were prior to the 1st of October, 1838, say "from the 1st day of October, in the year of our Lord 1838."

<sup>e</sup> The costs attendant upon the removal of the judgment out of the inferior Court into the Court of Queen's Bench.

<sup>f</sup> The day on which the costs of removal were taxed.

C. D. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster, immediately after the execution hereof, to satisfy A. B. £—, which lately in [insert the style of the Court], by a rule of the said Court, entitled, &c., [as the case may be], were by the said Court ordered to be paid by the said C. D. to the said A. B., and which rule was afterwards on the — day of —, in the year of our Lord —, removed into our Court before us at Westminster by an order of our said Court before us at Westminster, [or of —, one of the Justices of our said Court before us at Westminster, as the case may be], in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were on the — day of —, in the year of our Lord —, taxed and allowed by our said Court before us at Westminster, at the sum of £—, and also to satisfy the said A. B. the said sum of £—<sup>g</sup> together with interest on the said two several sums of £—, and £—, at the rate of four pounds per centum per annum, from the said — day of —, in the year of our Lord —,<sup>h</sup> and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the — day of —, in the year of our Lord —.

#### No. VI.

*Writ of Capias ad Satisfaciendum*, on an order of an inferior Court, for payment of a sum of money and costs, removed into the Court of Queen's Bench.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; To the Sheriff of —, greeting. We command you that you take C. D. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £—, which lately in [insert the style of the Court], by a rule of the said Court, entitled, &c. [as the case may be], were by the said Court ordered to be paid by the said C. D. to the said A. B., and also £—, for the costs of the said rule, by the said Court also ordered to be paid by the said C. D. to the said A. B., which said rule was afterwards on the — day of —, in the year of our Lord —, removed into our Court before us at Westminster, by an order of our said Court before us at Westminster, [or of —, one of the Justices of our said Court before us at Westminster, as the case may be], in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were on the — day of —, in the year of our Lord —, taxed and allowed by our said Court before us at Westminster, at the sum of

<sup>g</sup> The costs of removing the rule of the inferior Court into the Court of Queen's Bench.

<sup>h</sup> The day on which the costs of removal were taxed.

£—, and also to satisfy the said A. B. the said sum of £—,<sup>i</sup> together with interest on the said three sums of £—, and £—, and £—, at the rate of four pounds per centum per annum, from the — day of —, in the year of our Lord —, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, the — day of —, in the year of our Lord —.

(Signed)

DENMAN,	J. GURNEY,
N. C. TINDAL,	J. WILLIAMS,
ABINGER,	J. T. COLERIDGE,
J. LITTLEDALE,	T. COLTMAN,
J. PARKE,	T. ERSKINE,
J. B. BOSANQUET,	W. H. MAULE,
E. H. ALDERSON,	R. M. ROLFE.
J. PATTESON,	

#### PARLIAMENTARY PRIVILEGE.—MEETING OF THE ATTORNEYS.

A MEETING of attorneys and solicitors was held on Tuesday at the Freemasons' Hall, Great Queen-Street, to consider whether any and what steps should be taken in consequence of the proceedings adopted against Mr. Howard, by order of the House of Commons, in reference to the case of *Stockdale v. Hansard*.

The meeting was attended by upwards of five hundred members of the profession.

Mr. Shadwell, on being called to the chair, briefly stated the object of the meeting. The resolutions which would be proposed he took on himself to say were so reasonable that in all probability they would not call for much, if any, discussion; but in case any difference of opinion should exist, he hoped, and he was sure it was the desire of every gentleman present, that all who wished to speak would be heard patiently.

Mr. Frere.—Although he was not one of those respectable gentlemen who had originated the meeting, and knew nothing of the intention to call it until the requisition had received all, or nearly all, the signatures which appeared on the printed paper—although for particular reasons he then declined to join in the requisition, knowing of many objections that might be urged against the holding of any public meeting on such an occasion, yet after a meeting had been so generally called for, he must say he not only entirely approved of it, but considered that the profession and the public at large were indebted to those who had taken the trouble to convene them. The question on which they were invited to express their sentiments was not whether the House of Commons ought or ought not to have the privilege of publishing to all the world whatever that house might in its wisdom think expedient to publish for the good of the nation, nor whether in the exercise

of that right the house was bound to respect or at liberty to disregard the interests and feelings of private individuals. These were important questions certainly, upon which they in common with all their fellow-subjects must have their own opinions; but they were not now met to consider them, and he hoped whatever any one might wish to say upon any of these points would be reserved for some more suitable opportunity, and that the chairman would, if necessary, remind them that such topics were to be avoided at the present moment, as extraneous to the business they had immediately in hand. Equally irrelevant would it be to enter into discussion as to the character of the individual who had been the occasion of the proceedings in question or of the cause which had given rise to them; and no gentleman, he trusted, would divert the attention of the meeting from its most important purpose by indulging in any remarks either condemnatory or exculpatory of Mr. Howard or the suit in which he had been retained. Equally misplaced would be any expression of feeling on subjects of party politics. He hoped they would find no admission there. With respect to Mr. Howard, it was enough for them on the present occasion to know that the cause was one which the law allowed, and that he was professionally justified, if not obliged, to undertake it. It was not for the merits of the particular case they contended, but for the principle it involved; and, if the case was not on its own merits entitled to any favour, they should contend for it on that account the more earnestly, lest the disfavour with which they regarded it should tempt them to establish a precedent against their own principles. This brought him to the real point for consideration—namely, whether according to the English constitution there existed rightfully in the House of Commons a power to stop the course of law, to reverse its solemn adjudications, and to deter its ministers by pains and penalties from seeking legal redress for declared admitted grievances. They maintained there was no such right, that a right to supersede the law was a right to make the law—a right which in this country could not be claimed by the House of Commons alone as a privilege any more than it could be claimed by the Crown alone as its prerogative; and that, strenuously and successfully as such a claim had been resisted when advanced under the name of Royal prerogative, it should be more strenuously resisted now that it was put forward in the shape of Parliamentary privilege, inasmuch as prerogative was capable of being resisted by the all-powerful and constitutional force of Parliament, whereas against a House of Commons determined to make encroachments on our liberties there was no adequate constitutional defence. It was needless to enlarge further upon this topic in an age like the present, which had the advantage of reading in the past history of their own country, and of witnessing in France in their own times, how utterly powerless all institutions became for resisting the aggressions of a rampant

<sup>i</sup> The costs of removing the rule from the inferior Court into the Court of Queen's Bench.

<sup>j</sup> The day on which the costs of removing the rule from the inferior Court were taxed.

House of Commons in cases where they had accomplished, although temporarily only, the subjugation of the Crown, the corruption of the army, the disorganization and spoliation of the church, and silencing of the law, so that there remained for the people nothing but the right of petitioning their oppressors—a right which became a mere mockery when employed as a means of resistance to arbitrary power, vested in a set of men whose maxim it was to tyrannize in the name of liberty, and ruin their country upon the pretext of public good. Should such a destiny await them they had only to pray that the night might be a short one, whatever might be the nature of the returning dawn. They were in God's hands, but they were, nevertheless, bound each in his station to do their utmost to avert the calamities which threatened them; and it became them peculiarly, as belonging to the profession of the law, and of that branch of it which had been selected for the commencement of such aggressions by the unlawful imprisonment of one of its members, to stand forward and raise their voices in vindication of the majesty and independence of the law, the great bulwark of the national liberties. He begged leave to move the following resolution : "That the members of this profession have observed with much alarm the proceedings of the House of Commons in imprisoning an attorney to the Court of Queen's Bench for having acted as attorney of a party in which it was supposed that a privilege claimed by that honourable house might be called in question."

Mr. Teesdale seconded the resolution.

Mr. Pike contended that no case had been made out for their interference, and moved an amendment to the effect that "this meeting does not, under the circumstances, feel called on to take any steps whatever in consequence of the proceedings adopted by the House of Commons against Mr. Howard with reference to the case of Stockdale and Hansard."

Mr. Guy seconded the amendment.

Mr. Anderton was glad that the profession had come forward not only to defend their own rights, but the rights and privileges of their clients. The question for the consideration of that meeting was, whether attorneys and counsel were to be deterred from doing their duty—whether individuals who felt themselves aggrieved were to be prevented from obtaining that redress which they could only get by the aid of their solicitors and counsel. All he could say was, that if any man feeling himself aggrieved applied to him for assistance, he would tender it, in spite of any resolution of the House of Commons or of the House of Lords. He only acknowledged the laws of his country; them he would obey so long as the judges told him he was right in the course he was pursuing, without fear or dread from any quarter. He regretted that the profession generally had not deliberated on it at an earlier opportunity; for he knew that the attorneys in the country were only waiting for an example from the London attorneys in order to follow it. With respect to Howard and

Stockdale, he threw them overboard; it was quite sufficient for him to know that the rights and privileges of the public were endangered by the proceedings of the House of Commons. But the Commons were not content with sending the attorney to prison, even his clerks were consigned to gaol, and they had imprisoned a child for obeying the lawful commands of his master and father. If the commons had wished to try the question in a bold and manly manner, they would at once have seized the bull by the horns: they would have attacked the counsel and the judges.

Mr. Baker P. Smith supported the amendment. He said that the meeting was convened for the purpose of considering what measure it was desirable for them to adopt, in consequence of the proceedings taken against Mr. Howard, and from that subject the meeting could not lawfully depart, no matter what resolution might be proposed. He thought that Mr. Howard had been very unfairly treated, for he was first of all made the basis of the meeting, and then, according to the suggestion of the last speaker, he was to be thrown overboard. He dissented from the resolution, because, for himself, he should say, he felt no alarm. The question really under discussion was the privilege of the House of Commons. Now, the meeting was not competent to discuss that question; and for this reason he supported the amendment.

Mr. Wizard wished to state the grounds which prevented him from concurring in the proposed resolution. He had heard it stated that the House of Commons had not the power to commit. ("No, No.") Such a statement had certainly been made, and it had been re-echoed round that room. Now, the Court of Queen's Bench had itself admitted in the return to the *habeas corpus* that the House of Commons did possess this power of committal, which was now disputed. It was not his intention to enter into the case of Mr. Howard, though he thought it might very fairly be introduced; still he thought it of so little importance, compared with other considerations, that he should pass it by altogether. There was no man in that assembly who valued more highly than he did the constitution and system of laws under which they lived, or entertained more sincere respect for the great authorities by whom those laws were administered. He believed that nothing had so much tended hitherto to carry this country through difficulties, and nothing would so much help to do so in future, as the confidence reposed by the great body of the people in the administration of the law. He, therefore, viewed with the deepest regret, the conflict which had arisen between the House of Commons and the Court of Queen's Bench. He could not, however, conceal from himself that the real question was whether the House had the privilege for which they contended, and whether they had the right to enforce it by the means to which they had resorted. He should not proceed to debate the whole question of the right of the House of Commons, for it would be waste of time in him to

repeat the arguments urged in its favour in the report drawn up by Sir T. Wilde. But let him ask, who signed that report besides the eminent individual he had just named? Who announced to the people that the House of Commons possessed this privilege? Was it merely the Solicitor General, or the Attorney General, Lord J. Russell, or members connected with the present cabinet? No; the privilege was claimed by Sir W. Follett, Sir F. Pollock, Sir R. Peel, and all those other distinguished conservative statesmen to whom he suspected the greater part of the present assembly looked up as their political guides—Sir J. Graham, Lord Stanley, and Mr. Goulburn. Under these circumstances, he thought it unnecessary for him to prove that the House of Commons possessed this privilege, and the power to enforce it by committal. He rejoiced, however, that a course had at last been adopted, the best calculated to settle the question; and that there was a prospect that the contest between the two tribunals would be terminated by some legislative enactment: but, believing that the House of Commons possessed that privilege and the power of enforcing it by committal, he could not support the proposed resolution; and should the amendment which had been moved not be carried, he was inclined to move that the meeting be adjourned. It had been said that attorneys were bound by their oaths to obey the directions of their clients; but they were only bound to obey just and legal directions; and the Court of Chancery would not admit it as a justification, if an attorney who had proceeded in spite of an injunction, pleaded that he had done so in obedience to the directions of his client.

Mr. Beaumont said he should imitate the conduct of the last speaker in abstaining from any discussion on the power of the House of Commons to maintain their privileges; but the question was, had they a right to set up whatever they chose as privilege, and to declare by an *ex post facto* law what should have been the law at a past period? If the Commons possessed this power, and if they had the right to exercise the functions of the legislature and the judicature conjointly, what, let him ask, had become of the institution of trial by jury which Lord Chatham had described as the strength and beauty of the constitution? What had now become of the Habeas Corpus Act? It was all but a dead letter. It had been said that the commonest courts had the power to commit for contempt, but he believed that the steward of a court leet would not have acted in the manner the House of Commons had acted. That officer would, doubtless, have the honour and manliness to set forth on his warrant the cause of the committal, and would feel himself degraded by resorting to concealment for the purpose of evading the provisions of the Habeas Corpus Act, of cheating the judges of their rightful jurisdiction, and abridging the liberty of the subject. What truth was there now in the maxim that the law of England knew no wrong without a remedy? The judges had decided that Stockdale and

Heward had sustained a wrong, and yet he blushed to own that they had been bound to hold that those parties were practically remediless. The bar had protested against this doctrine, but it was with indignation and shame he confessed that the public apathy of the attorneys and solicitors seemed to have pointed them out as men who might be trampled on. What would the House of Commons do next? Lord Howick counselled increased rigour, and no less a person than Sir T. Wilde, who had been a solicitor himself, had talked of adjournment instead of prorogation, and hinted at perpetual imprisonment. Was this a vain threat? It would prove so, if they were only true to themselves, and exhibited neither weakness nor irresolution.

Mr. Shaw said, that having been alluded to as the attorney in the case of Polack, he must declare that he never shrank from his duty. It did not suit his client to proceed and to be sent to Newgate for contemp', and consequently he (Mr. Shaw) was compelled to desist. However, as far as he was himself concerned, he acknowledged no expounders of the law but the courts of law. He supported the resolution.

Mr. Watt, the Queen's proctor in Ireland, also spoke in favour of the resolution. He said, there was but one feeling of indignation among the Irish practitioners against the arbitrary proceedings of the House of Commons.

The amendment proposed by Mr. Pike was then put, and only half a dozen hands held up in its favour. The rest of the meeting supported the original resolution, which was carried amid loud cheers.

Mr. Adlington moved the second resolution: "That it is the undoubted right of all her Majesty's subjects who consider themselves aggrieved by the act of any person whosoever to seek for redress in her Majesty's Courts; that the law has pointed out the proper remedy for an erroneous judgment of the courts, and the constitution has vested in the legislature the power of altering that law. But that the constitution does not recognize in any person or body in the state the right to control the administration of the law in her Majesty's Courts."

The resolution was seconded by Mr. Kinderly.

Mr. Wizard said, that some appeals having been made to their feelings on the subject of the *habeas corpus* and the trial by jury, it was necessary to bear in mind that neither one nor other had anything to do with the present question, which was, whether the House of Commons had the power to commit for offence.

The resolution was carried, after some further observations, by an overwhelming majority, the dissentients not numbering more than six.

Mr. Wm. Lowe moved the third resolution—"That all suitors in Her Majesty's Courts are entitled to the assistance of their attorney to conduct their cases, and that it is essential to the enjoyment of that right that the attorney should be protected in the lawful discharge of his professional duty; and that this meeting,

without expressing an opinion on any privilege claimed by the House of Commons, or on the conduct of any of the parties who have incurred the displeasure of the House, is of opinion that the imprisonment of an attorney for acting in his professional capacity, in accordance with the decision of the courts of law, is most dangerous to the rights and independence of this profession and to the due administration of justice."

Mr. G. Law seconded it.

The resolution was carried with acclamation.

Mr. Anderton moved the last resolution—“That a petition embodying these resolutions be presented to the House of Commons; that the Incorporated Law Society be requested to allow the petition to lie in the hall of the society for signature: and that Mr. Freshfield be requested to present it to the house.”

Mr. R. B. Follett seconded the resolution, and congratulated the meeting on the step which the House of Commons had now taken by means of a legislative enactment to settle these unhappy disputes.

Mr. Hamilton deprecated all idea of petitioning the House of Commons. They should at once address themselves to the Queen, praying that Her Majesty might be pleased to dissolve the parliament.

An amendment substituting an address to the Queen for a petition to the House of Commons was ultimately moved and seconded, then withdrawn, and afterwards moved again by other parties. After some discussion, however, the amendment, upon a show of hands, was negatived, the vast majority being in favour of the original resolution.

Mr. Lawrence stated the case of a client of his own, whose copyright had been infringed by Messrs. Hansard in the publication of a report by order of the House of Commons so recently as 1838, when, an action having been threatened, an interview was requested by the Solicitor of the Treasury, and a sum of 100 guineas awarded, not as an equivalent, but as a fine and acknowledgment on the part of Messrs. Hansard, for the wrong they had committed. If such a case had occurred in February 1840, and the compensation had been refused, what would have been said, if he had brought his action and retained, as he always did, the Solicitor General in the Common Pleas?

Thanks were then voted to the chairman, and the meeting separated.

Besides the gentlemen who took part in the discussion as above reported, there were present at the meeting the following amongst many other well known members of the profession: B. Holme, B. Austen, M. Clayton, T. Dawes, T. Platt, sen., T. Tindal, E. L. Pemberton, W. Malton, J. S. Bockett, W. Woodrooffe, Sir G. Stephen, J. S. Gregory, J. J. Sudlow, E. S. Bigg, K. Barnes, G. L. Baker, G. Capron, C. Druce, J. Egan, A. W. Grant, A. Gordon, J. Leman, C. Stevens, C. J. Whishaw, T. Wiglesworth.

The petition lies for signature at the Incorporated Law Society, Chancery Lane.

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### ASSIGNMENT OF COMPENSATION.

A. assigned to B. for valuable consideration, an annual sum, granted to him during pleasure of the grantors, as compensation for an office which A. had held, and which was abolished by act of parliament, and due notice of the assignment was given to the grantors: Held, upon motion before the hearing of the cause, that the assignment was valid in equity as between B. and A.'s general creditors.

This was a motion for an injunction to restrain the defendant Sir William Boothby, Receiver General of her Majesty's Customs, from paying to the other defendants, Charles Asprey, John Chart, or William Richard Browne, or any other person for their use, or the use of any of them, any monies in his Sir W. B.'s hands, for answering and paying the compensation allowance of 500*l.* a-year, which had been awarded and granted to the said W. R. Browne, on the abolition of his office of cocket-writer in the London Custom House; and also to restrain the said C. Asprey and J. Chart from proceeding at law against Sir W. Boothby for payment of said monies or any part thereof. The facts of the case were these: In the year 1831, the office of cocket-writer in the long room of the London Custom House, held for several years with large emoluments, by Mr. W. R. Browne, was abolished by the 1 & 2 W. 4, c. 40, and the annual sum of 500*l.* was by virtue of the 50 G. 3, c. 117, and the subsequent statutes for regulating the granting of pensions and compensations, awarded to him by the Commissioners of Customs, in pursuance of the authority of the Lords of the Treasury, as compensation, payable to him in equal quarterly payments by the receiver general. By two annuity deeds, dated respectively in September 1836, and May 1837, and duly executed and enrolled, Mr. Browne, in consideration of two sums of 600*l.* and 200*l.*, granted to the plaintiff Tunstall two annuities, amounting together to 105*l.* for his (Browne's life,) and to secure payment thereof, he assigned his compensation allowance. Notice of the annuities and of the assignment of the compensation was given at the Audit Office, Somerset House, soon after the execution of the deed, and to the Commissioners of Customs on the 5th of January 1838, and in that month, Mr. Browne, who had been arrested for a debt in November, 1837, was discharged, under the act for relief of insolvent debtors, and Asprey and Chart were appointed his assignees, to whom the Insolvent Debtors' Court made the usual assignment of the insolvent's estate and effects. Up to the month of April, 1839, Earle, another defendant in the cause, and also an annuitant of Browne, was in the habit of receiving the quarterly payments of his compensation allowance from the receiver general, and applying it in payment of the annuities

for which he had a power of attorney from Browne. From that period, the assignees, Asprey and Chart, claimed to have the payments of the compensation made to them for the benefit of the general creditors of the insolvent, and they obtained orders of the Insolvents' Court for that purpose, under the 29th sect. of 7 G. 4, c. 57.

Mr. Richards and Mr. J. H. Palmer, in support of the motion, contended that the compensation allowance was well assigned to Tunstall for a *bona fide* valuable consideration, and that he had a prior claim on the fund in satisfaction of his annuities. They cited *Alexander v. The Duke of Wellington*,<sup>a</sup> to shew that the circumstance of the compensation being held during pleasure and revocable, would not render it incapable of assignment in a Court of Equity; and they were proceeding to refer to numerous authorities in which future and expectant interests and possibilities were held to be assignable, when

The Vice Chancellor said it was unnecessary to do so, as it was clear that the contingent nature of the interest would not prevent its alienation in this Court.

They then argued that the compensation allowance, not having reference to any future services, was distinguishable from military pay and half-pay, *Stone v. Lidderdale*,<sup>b</sup> and that to prevent its alienation an express enactment was necessary, as in the cases of Chelsea Pensions (7 Geo. 4, c. 16, s. 26), Greenwich Pensions (10 Geo. 4, c. 26, s. 3), and Excise Pensions (7 & 8 Geo. 4, c. 53, s. 121). The Commissioners of Customs were purposely not made parties, as no compulsory order was asked against them.

Mr. K. Bruce and Mr. Coleridge, for the assignees, opposed the motion on the ground that the compensation allowance was not assignable, and that they were entitled under the orders for payment to them, which the Insolvent Court had made in pursuance of the 29th sec. The compensation allowance was in the order and disposition of the insolvent under the 30th section, notwithstanding the notice at the Audit Office. They also said that the Commissioners of Customs refused to recognize any assignments of pensions or allowances.

Mr. Wray, for Sir W. Boothby, submitted to such order as the Court would be pleased to make, but considered that the Court could not interfere, as the allowance was a mere voluntary and revocable grant.

Mr. Richards, in reply, contended that the compensation was never within the 29th sec. of the insolvent act, because it had been well assigned to the plaintiff before the insolvency, and that the 30th sec. had no application.

The Vice Chancellor was of opinion that compensation was assignable, and that the assignment to the plaintiff was one which would be held a valid one in equity, and that the notices at the Audit Office was sufficient to complete it. He could make no order at present against either the Lords of the Treasury, or

the Commissioners of Customs, so as to bind them, inasmuch as they were not before the Court as parties to this suit. The order therefore, which he should now make upon the present application was, that unless in the meantime the Lords of the Treasury or the Commissioners of Customs should make an order to the contrary, Sir W. Boothby should be restrained from paying over the monies for the quarterly payments of the compensation allowance in his hands, to the defendants Asprey and Chart, and that these latter defendants should also be restrained from taking any proceedings in the Insolvent Court or otherwise at law for the recovery of the same.

*Tunstall v. Sir W. Boothby and others*, Sittings at Lincoln's Inn, February 22d, 1840.

### Queen's Bench.

[Before the Four Judges.]

#### REGISTRATION ACT.—INDICTMENT.

The 6 & 7 W. 4, c. 86, (*the Birth, Marriage, and Death Registration Act*) is compulsory in its provisions, and if the information required by that statute is withheld, the party withholding it is liable to indictment.

A public act which does require certain things to be done, but does not attach any specific penalty to the not doing of them, may be enforced by indictment.

This was an indictment against the defendant for having violated the provisions of the 6 & 7 W. 4, c. 86, the act relating to the registration of births, marriages, and deaths, by having refused to give the particulars of the birth of a child, pursuant to the 20th section of that statute.<sup>a</sup> The indictment stated that the defendant was the father of a child which had been born in St. Peter's district, Birmingham. That Geo. Pinner was the registrar of that district. That in pursuance of the act he applied to the defendant and requested to be furnished with information respecting the time of the birth, the sex of the child, the names of the parents, and the business or profession of the father. That the defendant had no lawful excuse for not giving the required information, but intending to prevent the due execution of the law and the carrying into effect of the statute, he contemptuously and unlawfully wholly refused to give to the said Geo. Pinner the information so demanded of him. The indict-

<sup>a</sup> By which it was enacted, "That the father or mother of every child born in England after the first day of March, 1837, or in case of the death, illness, absence, or inability, of the father or mother, the occupier of the house or tenement in which such child shall have been born, shall within forty-two days next after the day of every such birth, give information upon being requested so to do, to the said registrar, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered, touching the birth of such child."

ment was found at the sessions, and the defendant then pleaded not guilty. The indictment was afterwards removed to this Court by *certiorari*, when a verdict of guilty was submitted to, subject to the opinion of this Court on a case. Two questions were originally intended to be raised, namely, one relating to the evidence necessary to shew that Piouer was the registrar of the district, and as such entitled to demand the information; and secondly, whether an indictment for this offence was sustainable in point of law. The latter was the only question argued and decided. The argument occurred in Michaelmas Term, 1839.

The *Attorney General* in support of the indictment.—The question whether this is an indictable offence seems to depend on two considerations. First, whether the statute requires the information to be given, or leaves it optional with the parents to give or refuse the information; and secondly, whether if the information is required to be given, the withholding of it amounts to an indictable offence under the statute. It is clear that the statute did not intend to leave the giving or refusing of the information to the option of the parents. The act was passed for a public purpose: if the information may be withheld at the will and pleasure it may be withheld by the negligence of the parent. Then the object of the act may thus be defeated, either by the wilful folly or the utter carelessness of anybody. The legislature never could have intended such to be the case. Then if the act required the information to be given, is the refusal to give it a matter which may be made the subject of an indictment? It may. It is a principle of law, that where a public act directs something to be done for a public purpose, but does not provide any special penalty for the not doing of it, the party guilty of the disobedience to the act is punishable at common law by indictment. The law has thrown a duty on him which he must discharge. This rule is clearly recognised in all the text writers.<sup>b</sup> The indictment is consequently sustainable.

Sir F. Pollock, *contrad.*—This is not an indictable offence. The general law so stated on the other side is not denied, but it is inapplicable in the present case. The act did not intend to compel all parties to register the births of their children, but only to give those who might be desirous of having the benefit of a complete register the opportunity to avail themselves of the means thus afforded by the legislature. The matter was left optional with the parties. This is proved by the fact that the statute does not put an end to all other modes of registration, and command that this new mode alone shall be adopted. Thus in the 18th section it recognises the existence of other modes, and when children have been already registered under those the old modes, it does not require

the parents again to register them according to the mode now provided by this act. Thus in the 18th section, after directing what the registrar is to do, and how his duties are to be performed, the act contains these words "touching every such birth or every such death, as the case may be, which shall have been already registered." These last words shew that where the birth has already been registered, the parents need not again register it. So that if registered in the usual way by the baptism of the child in the church, it is clear that the act does not compel the parents again to go through the ceremony, and give information to the registrar of the district. It is matter of notoriety that in passing through the legislature the compulsory clauses were struck out on an objection raised to them by the most venerable church authority in the land, and it is therefore matter of history that the legislature intended only to pass an act offering a perfect means of registry, but not compelling persons to adopt it.

The *Attorney General* in reply.—The words referred to in the 18th section "not already registered" were meant merely to prevent two registrations of the same matter by different officers under this act. It did not abolish the church register, but for public purposes it provided that there should be a civil register of births, marriages, and deaths.

*Cur. ad. coll.*

Lord Denman (in Hilary Term, 1840) delivered judgment.—This was an indictment preferred against the defendant for not having given, in the manner provided by section 29 of the 6 & 7 W. 4, cap. 86, the information required by that statute, the Registration Act, to the registrar of the district concerning the birth of a child. Though in the course of the argument there did not appear to be in the minds of any of those who argued the case, any doubt that it was the general intention of the legislature to obtain this information, yet it was contended that the provisions of the statute were such as to leave it to the parties to give such information or not at their pleasure. But upon considering the provisions of the statute we cannot adopt that argument, and we think that the words of the 29th section are too strong to be got over. They declare that "the father or mother of every child born in England, or in case of the inability of the father or mother, the occupier of the house, &c., shall within forty-two days next after the day of the birth give information on being requested so to do, of the particulars required to be registered." It is the duty of the registrar to require such information, and if he neglect the duties imposed upon him by the act, he will be liable to an indictment for neglect of such duties, the performance of which is not otherwise provided for in the statute. Now it is impossible for him to perform all the duties of his office if this information is withheld. The section gives direct and positive injunctions that the information shall be afforded. Here it is withheld, and looking at the general object of the law we cannot avoid

<sup>b</sup> Hawk. C. 6, s. 5; 2 Hawk. C. 25, s. 4; 4 Bla. Com. 122; *Rex v. Robinson*, 2 Burr. 799; *Rex v. Boyer*, *ib.* 832; *Rex v. Davis*, *ib.* 850; *Rex v. Stubbis*, 2 Term Rep. 295; *Rex v. Harris*, 4 Term Rep. 202.

holding that these injunctions must be obeyed in this, which is a matter of great public concern. The question here is, whether the defendant has been brought within the provisions of the statute so as to be liable for the wilful though innocent refusal of obedience to its provisions. We think that he has been, and that the verdict must be entered for the crown.

The Attorney General stated that the only object in this prosecution was to assert the law, and that in this case he did not press for more than a merely nominal punishment.

*The Queen v. Price*, H. T. 1840. Q. B. F. J.

### Queen's Bench Practice Court.

#### FILING AFFIDAVITS.—ACCIDENT.

*In enlarged rules, nothing but inevitable accidents can excuse not filing affidavits a week before term.*

*Greenwood*, moved for a rule to show cause why the affidavits in this case should not be filed, *nunc pro tunc*. It appeared that the rule had been enlarged on the usual conditions, of filing the affidavits a week before the term, which had not however been done. He contended that under the R. M. 36 Geo. 3, K. B., this might be done, if it should appear to the satisfaction of the court that accident had alone prevented the affidavit from being filed. He cited *Hoar v. Hill*,<sup>a</sup> and *Harding v. Austin*,<sup>b</sup>

*Patteson, J.*—There is a later case than these, *Turner v. Truxin*.<sup>c</sup> What does your affidavit shew to bring you within the words of the rule 36 Geo. 3?

*Greenwood*.—It was the result of accident.

*Patteson, J.*—I consider myself entirely bound by the case of *Turner v. Truxin*. The court in that case thought it better to adhere to the strict words of the rule, and though a contrary practice had existed, they determined for the future to adhere strictly to the rule.

Rule refused.—*Wright v. Lewis*, H. T., 1840. Q. B. P. C.

#### EJECTMENT.—NAMES OF LESSORS.—ENTITLING AFFIDAVITS.

*In entitling an affidavit in a landlords' rule in an action of ejectment the names of all the lessors ought to be introduced.*

In this case a rule nisi had been obtained under the 1 Geo. 4, c. 87. It was a landlord's rule, and was granted in *Doe* on the several demises of *George Pryme & another*.

*Cole* shewed cause and contended that all the names should have been set out in the affidavits on which the rule was granted. He cited *Rex v. The Sheriff of Surrey*,<sup>a</sup> *Furis v. Dirmar*,<sup>b</sup> *Nix v. —*,<sup>c</sup> *Doe d. Spencer v. Want*,<sup>d</sup> *Tomkins v. Geach*,<sup>e</sup> *Doe d. Cousins v. Roe*.<sup>f</sup> There was also an objection to the affidavits on the ground that they were

sworn before a person who appeared from the declaration to be the plaintiff's attorney, contrary to Reg. Gen. H. T. 2 Wm. 4, s. 6.

*Willmore* supported the rule, and submitted that it was sufficient if the plaintiff's and defendants' names were set out.

*Patteson, J.*—What do you say to the case of *Doe d. Cousins v. Roe*?

*Willmore*.—There it did not appear how far the case had proceeded. In the present one it is merely the beginning of the action, and it is not requisite to set out more fully the names of the lessors of the plaintiffs who were not plaintiffs or defendants in the case. As to the objection that the affidavits were sworn before a person who appeared by the declaration to be plaintiff's attorney, he contended on the authority of *Beaumont v. Dean*,<sup>g</sup> and *Hild v. Davies*,<sup>h</sup> that it must expressly appear that the attorney was not alone the general attorney of the party, but the attorney in the cause at the time the affidavit was sworn.

*Patteson, J.*—The case of *Doe d. Cousins v. Roe* was judgment against the casual ejector in a very early stage of the proceedings; and if it were not necessary to mention the names, the court would have said so in that case. As to the other objection, it appears by the declaration delivered that the attorney was attorney in the cause, which is sufficient.

Rule discharged.—*Doe d. Pryme v. Roe*, H. T. 1840. Q. B. P. C.

### Exchequer of Pleas.

#### ARBITRATION.—AWARD.—COSTS.—TAXATION. —INDEPENDENT PROVISIONS IN AWARD.

*An arbitrator has no power to order costs to be paid as between attorney and client, and if a provision ordering such costs to be paid is so connected with other parts of the award that it cannot be rejected as an independent provision, the award is bad.*

*Butt* shewed cause against a rule obtained by *Warren* on the part of the plaintiff, for setting aside the award in this case. It appeared that the parties had agreed to refer to arbitration "all the matters in difference on the record in the cause, (except so far as related to a sum of 10*l.*) The costs of the said action (except as aforesaid), and also of the reference and award incident thereto, to be in the discretion of the arbitrators." They awarded that "the action should cease, and no further proceedings be taken therein; that the defendant should pay to the plaintiff the sum of 50*l.*, towards the costs incurred in the cause and reference. That the plaintiff should pay his own costs of the cause and reference, and also pay to the defendant the costs of the defendant in the cause and reference, and the said costs in the mean time to be taxed as between attorney and client. That the plaintiff should pay to the arbitrators for their use 25*l.* for their fees and disbursements as arbitrators in the reference, and for the costs and expenses of the award." To this award three objections were made: First, that it was uncertain, it not

<sup>a</sup> 1 Chit. 27.

<sup>b</sup> 6 Moo. 523.

<sup>c</sup> 4 D. P. C. 16.

<sup>d</sup> 7 T. R. 661.

<sup>e</sup> 2 East 180.

<sup>f</sup> 2 Moore 722.

<sup>g</sup> 1 Smith 457.

<sup>h</sup> 7 D. P. C. 53.

<sup>i</sup> 4 D. P. C. 351. <sup>j</sup> 5 D. P. C. 568.

appearing whether the 50*l.* to be paid to the plaintiff, was to go towards the costs of the plaintiff or of the defendant, or both; secondly, that in the former alternative, it was inconsistent; and thirdly, that the arbitrators had no power to award the taxation of costs to be made as between attorney and client.

*Butt* shewed cause, and contended that the award of 50*l.* to the plaintiff is in consideration of the expenses to which he will be put by the payment of costs on both sides. The arbitrators have power to award costs as they please, and they have chosen this peculiar mode of doing so; and this renders it perfectly consistent with the next part of the award that the plaintiff is to pay the costs both of himself and the defendant. As to the third objection, the arbitrators, it is true, had not power to order the costs to be taxed as between attorney and client; but it is competent for the Court either to read those words as meaning a taxation to be made in the usual way between party and party, or reject them as surplusage. *Whitehead v. Frith.*<sup>a</sup>

*Warren* supported the rule and contended, that the first part of this award amounts in substance to ordering a *stet processus*; after which comes the unintelligible provision that the defendant is to pay the plaintiff 50*l.* for costs, and the plaintiff to pay both his own and those of the defendant. Then with respect to the mode of taxation, it is clear that no arbitrator has power to award costs to be taxed as between attorney and client. *Watson on Awards*, pp. 133, 134.

*Alderson, B.*—That objection would only have the effect of setting aside the award so far. The case of *Marder v. Cox,*<sup>b</sup> seems to shew that that portion may be rejected.

*Warren.*—In that case the part relating to the costs was easily separable from the rest of the award, in which case the authorities all agree that the part in which the arbitrator has exceeded his authority may be rejected;<sup>c</sup> *Jackson v. Clarke.*<sup>d</sup> That, however, is not so here.

*Parke, B*—There is no difficulty about the two first objections. The apparent inconsistency is explained by the context, and the award means in substance that the plaintiff is to pay the costs on both sides, both of the cause and reference, together with the 25*l.* to the arbitrator; as a partial indemnity for all which, he is to receive a sum of 50*l.* from the defendant. But I am afraid that the third objection is fatal. The award of the taxation of costs as between attorney and client, is so connected with what goes before and what follows, that *non constat*, that the payment of 50*l.* by the defendant, was not part of the consideration for which it was awarded. It seems to be so connected with the benefit intended to be granted to the defendant by this award, that we cannot venture to reject it.

Rule absolute.—*Seckham v. Babb*, H. T. 1840. Excheq.

<sup>a</sup> 12 East, 165.

<sup>b</sup> Cowp. 127.

<sup>c</sup> 2 Ch. Arch. 1262. <sup>d</sup> 1 M'Clel. & Y. 200.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES,

### House of Lords.

- Copyholds Enfranchisement. *Ld. Brougham.*  
[In Select Committee.]  
Frivolous Suits Act amendment, touching costs.  
[For second reading.] *Lord Denman.*  
Rated Inhabitants Evidence.  
[In Committee.]  
Vagrants' Removal.  
[For third reading.]  
Brighton Small Debts Court.  
[In Committee.]

### House of Commons.

- To amend the Law of Copyright.  
[In Committee.] *Mr. Serjt. Talfourd.*  
To extend the Term of Copyright in Designs of woven Fabrics. *Mr. E. Tennant.*  
[In Committee.]  
To carry into effect the Recommendation of the Ecclesiastical Commissioners. *Lord J. Russell.*  
To extend Freemen and Burgesses' Right of Election. *Mr. F. Kelly.*  
Drainage of Lands. *Mr. Handley.*  
[For second reading.]  
To amend Tithe Commutation Act.  
[In Committee.] *Sir E. Knatchbull.*  
Small Debt Courts for  
Aston, Marylebone,  
Barkston Ash, Tavistock,  
Bolton, Newton Abbott,  
Liverpool, Wakefield Manor.  
Summary Conviction of Juvenile Offenders.  
[In Committee.] *Sir E. Wilmet.*  
To amend the County Constabulary Act. *Mr. F. Maule.*  
To amend the Laws of Turnpike Trusts, and to allow Unions. *Mr. Mackinnon.*  
For the entire Abolition of the Punishment of Death. Negatived: there being 90 for and 161 against the measure. *Mr. Ewart.*  
Prisons Act Amendment.  
[In Committee.]  
To consolidate and amend the Law of Sewers.  
[For second reading.]  
To give Summary Protection to persons employed in the publication of Parliamentary Papers. [In Committee.] *Lord J. Russell.*  
*Bills passed the Commons.*

Vagrants' Removal.  
Brighton Small Debts Court.

### THE EDITOR'S LETTER BOX.

In the case of *Barron v. Fitzgerald*, p. 36*b*, the rule, instead of being discharged, as reported, was made absolute—as appears evidently by the abstract of the decision and the judgment.

The letters of "An Attorney"; T. S. G.; X.; "Quid nunc"; H. H.; "A Constant Reader"; and "A Copying Clerk," shall receive early attention.

Several communications have been printed, but are unavoidably postponed.

# The Legal Observer.

SATURDAY, MARCH 21, 1840.

— “Quod magis ad nos  
pertinet, et nescire malum est, agitamus.

HORAT.

## THE LORD CHANCELLOR'S BILL FOR CHANCERY REFORM.

We have at last before us the Lord Chancellor's Bill for facilitating the Administration of Justice in the Equity Courts, and we need hardly say that a more important measure has never been introduced into Parliament; and we shall, without further preface, endeavour to give an account of its provisions. These affect—I. The Judicial Committee of the Privy Council. II. The Court of Exchequer. III. The Judges of the Court of Chancery; and, IV. The Officers of the Court of Chancery.

I. The Master of the Rolls for the time being is to be appointed Vice President of the Privy Council, if a member, and in his absence, another member of the Privy Council is to be appointed temporary Vice President; and the Judges, not being members of the Judicial Committee, are to assist the Committee in the discharge of their judicial duties, and the ordinary duties of the Judges attending the Judicial Committee are to be performed by other Judges during their absence.

II. The jurisdiction of the Court of Exchequer, as a Court of Equity, is to be abolished and transferred to the Court of Chancery, and suits and proceedings transferred to the Court of Chancery are to be carried on according to the practice of that Court; but the Court of Chancery shall have power to direct suits to be carried on according to the practice of the Court of Exchequer, if it shall so think fit. The necessary powers and jurisdiction are given for carrying out this important change. Power is expressly given to the Court of Chancery in a summary way to restrain the Bank of England

from permitting the transfer of stock. The stocks and funds in the name of the Accountant General of the Court of Exchequer are to be transferred into the name of the Accountant General of the Court of Chancery. And the proceedings in the Court of Exchequer as a Court of Equity are to be delivered by the officers of that Court to such persons as the Master of the Rolls by warrant, counter-signed by the Lord Chancellor, shall direct, and shall be deemed records of the Court of Chancery. The following officers of the Court of Exchequer are to be abolished. The Accountant General of the Court of Exchequer, Clerk to the Masters on the Equity Side of the same Court, Clerk to the Accountant General, Clerk of Reports, and Examiner. This Court and its officers being thus displaced, prepares us for the third great alteration.

III. Two additional Judges are to be appointed to assist in the discharge of the judicial functions of the Lord Chancellor, each of such additional judges to be called Vice Chancellor, each of whom shall have full power to hear and determine all matters depending in the Court of Chancery, either as a Court of Law or of Equity, or which shall have been submitted to the jurisdiction of the Court by the special authority of any act of parliament, as the Lord Chancellor shall direct, and the decrees of each such Vice Chancellor shall be deemed to be the decrees of the Court of Chancery; but no such Vice Chancellor, shall have power to discharge the orders of any other Vice Chancellor, not being his predecessor in office. Each of such Vice Chancellors is to sit in the absence of the Lord Chancellor, or in a separate Court. The New Vice Chancellors are to rank after the Chief Baron of the Exchequer, and as between

themselves, according to seniority of appointment to their respective offices. Each Vice Chancellor is to have a secretary, usher, and trainbearer, and the secretaries, registrars, and other officers appointed to attend the Lord Chancellor, are to attend the Vice Chancellors, as circumstances shall require. The Lord Chancellor, with the concurrence of the Master of the Rolls, and Vice Chancellors, or any two of them, are empowered to make orders, and with the concurrence of the Master of the Rolls to direct causes pending before the Master of the Rolls, to be heard by any Vice Chancellor. The salaries of the Vice Chancellor and his officers, are to be paid out of the interest and dividends arising from the Suitors' Fund. Each Vice Chancellor 500*l.* per annum, to his secretary 300*l.* per annum, to his usher 200*l.*, and to his trainbearer 100*l.*; after fifteen year's service, or being afflicted by some permanent infirmity, any Vice Chancellor may retire with a pension of 3,500*l.*

IV. The additional Judges will render a corresponding addition of officers to the Court of Chancery necessary. For this purpose, the principal officers of the Equity Exchequer are transferred to the Court of Chancery. Richard Richards, Esq., the present Accountant General, is to be created a Master in Chancery, with a salary of 2,500*l.* a year, and on his death or resignation, a new master is to be appointed. Mr. Buckland, the present clerk to the Master and Accountant General of the Court of Exchequer, is to be appointed chief clerk to Mr. Richards, at a salary of 1,000*l.* per annum, and Mr. Fenner, the present clerk of the reports, is to be appointed junior clerk to Mr. Richards, at a salary of 150*l.* per annum. The number of registrars is to be increased from six to ten: the four additional registrars are to be taken from the present Sworn Clerks of the Court of Exchequer, and full provision is made for the filling up vacancies, and for the regulation of their salaries, for which we must refer to the bill. To such of the officers of the Court of Exchequer as are not placed by the present measure, compensation is to be awarded.

This is a brief outline of the new plan; and, as a step in the great cause of Chancery reform, we give it our respectful approval. It cannot be considered as a final settlement of the question, nor is it intended—as we apprehend—as a remedy for the whole of the grievance. It leaves untouched the appellate jurisdiction of the House of Lords,

the Masters' offices, the Six Clerks' offices, and many other matters. It is directed against one of the great evils attending the present administration of equity, *the immense arrear of causes, and other matters now waiting for hearing*, which, it will probably be admitted, is the greatest grievance of all, and for this purpose, under all the circumstances of the case, we gladly accept it. The abolition of the Equity Exchequer, and the establishment of one uniform system of Equity practice, will be on the whole, we are satisfied, a great improvement; and the services of four Equity Judges in separate Courts, devoted to the regular dispatch of original business, acting in concert, and assisted by an adequate staff of officers, must—as it appears to us—be sufficient to dispose of the present arrear, and to keep it down for the future. This, therefore, is an important beginning, and will be an immense gain to the suitor; but when we look beyond this stage of the business, and consider the appeals from these Courts, we do not see our way so clearly. Can the Lord Chancellor, in addition to his other business, hear appeals from four Courts? or is it intended under the proposed act, to form an appeal Court, in which the other Judges shall sit? By s. 19, no Vice Chancellor is to have power to discharge the orders of any other Vice Chancellor, or any decree, &c. by any Lord Chancellor, "unless authorized by the Lord Chancellor so to do." We do not know whether this points at a Court of appeal to be formed of more than one of the new Judges. By s. 27, all decrees, &c. of any Vice Chancellor shall be subject to be reversed, discharged, or altered by the Lord Chancellor. Why should not three of the inferior Judges have the power of reversing the decree or order of the fourth? We venture to throw this out for consideration. We would also suggest that the new Judges should have some more distinguishable name than Vice Chancellor. It appears to us to lead to some confusion, even in the present bill, and—as we think—will be inconvenient. Why should not all the Vice Chancellors be called Judges in Equity?

We shall now conclude these hasty remarks. We hail this bill as an important beginning of the great work of Chancery Reform, and we will gladly lend our humble aid, and we invite that of our professional brethren, to render it as complete as possible. Let us not, however, relax in our exertions. It may be convenient to proceed by steps, and divide the work into several bills. Here then we have bill No. I. But

we earnestly exhort Mr. Spence, Mr. Field, and all others, to pursue their useful labours in the other branches of the subject.\* Let full information be obtained—let returns be pressed for—and while we are gaining an efficient judicial power for making decrees and orders, let us see that they are acted on with no unnecessary delay or expense to the suitor. Let us also endeavour to obtain a competent Court of Appeal, not only from the decrees of the inferior Judges of the Court of Chancery, but from the superior Judges—in fact, the reformation of the appellate jurisdiction of the House of Lords. The subject of Chancery Reform now divides itself into three branches :—I. The inferior original Courts, or the disposing of the present arrear, and the obtaining a hearing of *original* business. II. The officers of the Courts of Chancery, and the mode of working orders and decrees when obtained. III. The appellate jurisdiction, or mode of reversing orders and decrees when obtained.

We now proceed to lay before our readers the Lord Chancellor's plan for providing for the first of these grievances, to which we need not invite their attention.

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The bill is intituled "An Act for facilitating the Administration of Justice," and recites that the administration of justice by her Majesty in council would be greatly facilitated by the appointment of a judge to preside in the Judicial Committee of the Privy Council : it is therefore proposed to be enacted—

1. That the Master of the Rolls for the time being (if a member of her Majesty's Privy Council) shall in the absence of the Lord President for the time being of her Majesty's Privy Council, preside in the Judicial Committee of the Privy Council, with the style and title of Vice President of her Majesty's Privy Council.

2. That it shall be lawful for her Majesty, from time to time, by her sign manual, revocable at pleasure, to appoint any other person, being a member of the said judicial committee, to execute the office of Vice President of the Privy Council whenever the Master of the Rolls shall, by sickness or attention to his other duties, be prevented from personally attending the said judicial committee.

3. And whereas by an act passed in the fourth year of the reign of his late Majesty King William the fourth, intituled "An Act for the better administration of Justice in His Majesty's Privy Council," it was (amongst other things) enacted, that no matter should be heard, nor should any order, report, or recommendation be made, by the said Judicial Committee, in pursuance of the said act now in recital, unless in the presence of at least

four members of the said committee ; and that no report or recommendation should be made to his Majesty unless a majority of the members of such Judicial Committee present at the hearing should concur in such report or recommendation : And whereas it is expedient to alter and amend so much of the said recited act as is herein-before recited ; be it therefore enacted, that from and after the passing of this act no matter shall be heard, nor shall any order, report, or recommendation be made, by the Judicial Committee of the Privy Council, in pursuance of the said recited act, unless in the presence of at least four members of the said committee, one of whom shall be the Vice President for the time being of her Majesty's Privy Council, or the person appointed under this act to execute that office ; and that no report or recommendation shall be made to her Majesty unless a majority of the members of the said committee present at the hearing shall concur in such report or recommendation : Provided always, that it shall be lawful for her Majesty, from time to time, by her sign manual, revocable at pleasure, to direct that any matter may be heard, and any order, report, or recommendation may be made, by the said committee, in the presence of three members of the said committee, of whom the Vice President for the time being of the Privy Council, or the person appointed under this act to execute that office, shall be one ; and that every order, report, or recommendation made by such three members of the said committee in pursuance of such direction, or by a majority of them, shall be deemed to be an order, report, or recommendation made by the said committee within the intent and meaning of the said recited act.

4.—And whereas it may be expedient that some or one of the Judges of her Majesty's Superior Courts of Common Law at Westminster, not being members of the said committee, should attend meetings of the said committee, for the purpose of assisting the said committee in the discharge of their judicial duties ; be it therefore enacted, that any such judge or judges, attending any meeting or meetings of the said committee at the request of the Lord President or Vice President, or other person discharging the duties of Vice President, shall be an assistant or assistants to the said committee, and shall advise with the members of the said committee concerning the matters which shall be then and there submitted to their consideration.

5. That during the time of the attendance of any judge or judges at meetings of the said committee (whether such judge or judges shall be a member or members of the said judicial committee, or not), the ordinary duties of such judge or judges shall be performed by the other judges of the Court or Courts to which such judge or judges shall belong respectively, in regard to the business of such Court or Courts respectively, and by such of the judges of the said Superior Courts as shall not so attend, including the chiefs of the same Courts, in regard to the other duties

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\* Mr. Spence has just published a Supplement to his valuable addresses, to which we beg to call attention.

of the judge or judges so attending; and it shall be the duty of such other judges to make, and they are hereby required to make, fit and proper arrangements for the performance of such duties accordingly.

6. And whereas the business on the plea side of her Majesty's Court of Exchequer at Westminster has of late years greatly increased, and a transfer to the Court of Chancery of the jurisdiction of the said Court of Exchequer as a Court of Equity would relieve the judges of the said Court of Exchequer, and would otherwise tend to promote the public advantage; be it therefore further enacted, that on the day of all the power, authority, and jurisdiction of her Majesty's Court of Exchequer at Westminster as a Court of Equity, and all the power, authority, and jurisdiction which shall have been conferred on or committed to the said Court of Exchequer by or under the special authority of any act or acts of parliament, (other than such power, authority, and jurisdiction as shall then be possessed by or be incident to the said Court of Exchequer as a Court of Law or as a Court of Revenue,) shall be and the same are hereby transferred and given to her Majesty's High Court of Chancery, to all intents and purposes, in as full and ample a manner as the same might have been exercised by the said Court of Exchequer if this act had not passed; and the same power, authority, and jurisdiction shall, so far as respects the exercise thereof by the said Court of Exchequer, cease and determine: provided always, that this act shall not abridge, lessen, or in anywise affect the power, authority, or jurisdiction of or incident to the said Court of Exchequer as a Court of Law or as a Court of Revenue.

7. That all suits and matters which on the said day of shall be depending in the said Court of Exchequer as a Court of Equity, or under such act or acts of parliament as aforesaid, shall be and the same are hereby transferred, with all the proceedings therein, to the said Court of Chancery, there to be carried on and prosecuted and dealt with and decided according to the practice of that Court; and that all writs which shall have been then issued in the same suits and matters, or any of them, returnable in the said Court of Exchequer, shall be and the same are hereby made returnable in the said Court of Chancery; provided always, that in case it shall appear to the Court of Chancery to be just and expedient that any suit or suits, matter or matters, so transferred to the said Court of Chancery, should be wholly or partially carried on according to or regulated by the present practice of the Court of Exchequer, or that any question or questions arising in the same suit or suits, matter or matters, should be decided with reference to the present practice of the said Court of Exchequer, it shall be lawful for the said Court of Chancery to make such order or orders in relation thereto as to the said Court of Chancery shall seem meet.

8. And be it enacted, that on and after the said day of it shall be lawful for the

said Court of Chancery, upon the application of any party interested, by motion or petition, in a summary way, to restrain the Governor and Company of the Bank of England, or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company which may be standing in the name or names of any person or persons or body politic or corporate, in the books of the Governor and Company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon; and every order of the said Court of Chancery upon such motion or petition as aforesaid shall specify the amount of the stock or the particular shares to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same shall be standing: Provided always, that the said Court of Chancery shall have full power, upon the application of any party interested, to discharge or vary such order, and to award such costs upon such application as to the said Court shall seem fit.

9. Stocks, &c. in the name of the Accountant General of the Court of Exchequer, to be transferred into the name of Accountant General of the Court of Chancery; applicable to such purposes as the same were respectively applicable to. Officers of Bank of England, &c. directed to make the transfer.

10. Accountant General of Court of Exchequer to make up accounts with Accountant General of Court of Chancery.

11. Property vested in Accountant General of the Court of Chancery by this act to go to his successors in office.

12. Certain funds transferred to the Accountant General of Court of Chancery, to the account, "Account of monies placed out," &c.

13. Certain other funds transferred to Accountant General of Court of Chancery, to an account, "Account of securities purchased with surplus interest," &c.

14. Money by any act &c. directed to be paid into the bank to the credit of Accountant General of Exchequer to be so paid to the credit of Accountant General of Court of Chancery. Stocks, &c. transferrable in the name of Accountant General of Exchequer to become transferrable into the name of Accountant General of Court of Chancery.

15. That on the said day of the offices of Accountant General of the Court of Exchequer, Master on the Equity side of the Court of Exchequer, Clerk to the Masters on the Equity side of the same Court, Clerk to the Accountant General, Clerk of the Reports of the Court of Exchequer, and Examiner of the Court of Exchequer, shall be and the same are hereby abolished.

16. That all the bills, answers, decrees, and proceedings of the Court of Exchequer as a Court of Equity, and under such acts of parliament as aforesaid, shall, on the said day of , or as soon after as conveniently may be, be delivered by the several officers of

the said Court of Exchequer now having the custody of the same to such person or persons as shall be appointed by the Master of the Rolls to receive and take charge of the same by warrant under his hand, approved of and countersigned by the Lord Chancellor; and that from and after such delivery the same bills, answers, decrees, and other proceedings shall be deemed records of the Court of Chancery in the custody of the Master of the Rolls, subject to the provisions of an act passed in the second year of the reign of her present Majesty, intituled "an Act for keeping safely the Public Records."

17. And whereas the duties of the Master of the Rolls as Vice President of the Privy Council will prevent his devoting so much of his time as heretofore to the hearing of causes in Chancery: and whereas the business of the Court of Chancery has of late years greatly increased, and by reason of the transfer to the Court of Chancery of the equitable jurisdiction of the Court of Exchequer, further duties will devolve on the Court of Chancery, and it is therefore expedient, for the better administration of justice in the said Court of Chancery, that two additional judges should be appointed to assist in the discharge of the judicial functions of the Lord Chancellor: be it therefore further enacted, that it shall be lawful for her Majesty to nominate and appoint, by letters patent under the Great Seal of the United Kingdom, two fit persons to be additional judges assistant to the Lord Chancellor in the discharge of the judicial functions of his office, each of such additional judges to be called Vice Chancellor.

18. That from time to time, when and as any vacancy shall occur in the said office of Vice Chancellor, by the death, resignation, or removal from office of any Vice Chancellor for the time being, it shall be lawful for her Majesty, by letters patent under the Great Seal of the United Kingdom, to appoint a fit person to supply such a vacancy.

19. That each such Vice Chancellor shall have full power to hear and determine all causes, matters, and things which are or shall be at any time depending in the Court of Chancery in England, either as a Court of Law or as a Court of Equity, or incident to any ministerial office of the said Court, or which have been or shall be submitted to the jurisdiction of the said Court or of the Lord Chancellor by the special authority of any act of parliament, as the Lord Chancellor shall from time to time direct; and all decrees, orders, and acts of such Vice Chancellor so made or done shall be deemed and taken to be respectively, as the nature of the case shall require, decrees, orders, and acts of the said Court of Chancery, or of such incident jurisdiction as aforesaid, or under such special authority as aforesaid, and shall have force and validity and be executed accordingly, subject nevertheless in every case to be reversed, discharged, or altered by the Lord Chancellor; and no such decree or order shall be enrolled until the same shall be signed by the Lord

Chancellor: Provided always, that such Vice Chancellor shall have no power or authority to discharge, reverse, or alter any decree, order, act, matter, or thing made or done by any other Vice Chancellor to be appointed under this act, not being a predecessor in office of such Vice Chancellor, or any decree, order, act, matter, or thing made or done by any Lord Chancellor, unless authorized by the Lord Chancellor so to do, nor any power or authority to discharge, reverse, or alter any decree, order, act, matter, or thing made or done by the Master of the Rolls or the Vice Chancellor for the time being, appointed in pursuance of an act passed in the fifty-third year of the reign of His Majesty King George the Third, intituled "*An Act to facilitate the Administration of Justice,*" or any order, act, matter, or thing made or done by the Court of Review in bankruptcy.

20. That each or either of the Vice Chancellors to be appointed in pursuance of this act shall sit for the Lord Chancellor, whenever he shall require him so to do, and shall also, at such other times as the Lord Chancellor shall direct, sit in a separate Court, whether the Lord Chancellor, or the Master of the Rolls or the Vice Chancellor appointed in pursuance of the said act, shall be sitting or not, for which purpose the Lord Chancellor shall make such orders as to him shall appear to be proper and convenient from time to time as occasion shall require.

21. That every person holding or who shall have held the office of Vice Chancellor under this act shall, if a member of her Majesty's Privy Council, be a member of the Judicial Committee of the Privy Council.

22. That the Vice Chancellors to be appointed in pursuance of this act shall, during the continuance in office of the present Vice Chancellor, respectively have rank and precedence next to the Lord Chief Baron of her Majesty's Courts of Exchequer at Westminster; and that the Vice Chancellor to be appointed in pursuance of the said act of the fifty-third year of the Reign of King George the third, and the Vice Chancellors to be appointed in pursuance of this act, shall after the death of the present Vice Chancellor, or his resignation or removal from his office respectively, have rank and precedence next to the Lord Chief Baron of the Court of Exchequer at Westminster, and as between themselves shall have rank and precedence according to seniority of appointment to their respective offices.

23. That it shall be lawful for her Majesty, in and by such letters patent as aforesaid, and in and by any other letters patent under the Great Seal of the United Kingdom, to direct that each such Vice Chancellor to be appointed in pursuance of this act shall have a secretary, usher, and trainbearer, to be from time to time appointed and removed by such Vice Chancellor at his pleasure; and that the secretaries, registrars, and other officers appointed to attend the Lord Chancellor shall attend such Vice Chancellor when sitting for the Lord Chancellor, and also when sitting in

his separate Court, as circumstances shall require, and as the Lord Chancellor shall order and direct.

24. Vice Chancellor to hold office during his good behaviour, but may be removed upon address, &c.

25. Oath.

26. That from and after the appointment of the Vice Chancellors under this act it shall be lawful for the Lord Chancellor, with the advice or concurrence of the Master of the Rolls and Vice Chancellors for the time being, or any two of them, and he is hereby authorized and empowered to do all such acts, and to make and issue all such rules and orders, as by any act or acts of parliament now in force the Lord Chancellor, with the advice or concurrence of the Master of the Rolls and the Vice Chancellor for the time being, or one of them, is empowered to do, make, or issue.

27. That it shall be lawful for the Lord Chancellor and the Master of the Rolls from time to time to direct that any causes or matters, which shall be at any time or times depending for hearing or determination before the Master of the Rolls for the time being, shall be heard and determined by the Lord Chancellor or by one of the Vice Chancellors for the time being; but all decrees and orders to be made by any Vice Chancellor in pursuance of such direction shall be subject to be reversed, discharged, or altered by the Lord Chancellor.

28. Appointment of Richard Richards, Esq. to be a Master in Chancery. References depending before the Masters on Equity Side of Exchequer transferred to him, and such other references as the Lord Chancellor shall direct.

29. Her Majesty empowered by letters patent to appoint successors to Mr. Richards.

30. Appointment of —— Buckland, the present clerk to the Masters in Exchequer, to be chief clerk to Master in Chancery, &c.

31. Salaries to Vice Chancellor and his officers, and to Master, to be paid out of interest and dividends arising from Suitors' Fund.

32. Her Majesty empowered to grant annuity to Vice Chancellor on his resignation. Such annuity may be limited as herein mentioned. Period of service.

33. So much of 53 Geo. 3, as directs payment to Vice Chancellor of the salary of 5000/. repealed.

34. Regulating future salaries of Vice Chancellor appointed under 53 Geo. 3, c. 24.

35. 3 & 4 W. 4, c. 94. Number of registrars increased to ten. Provisions for filling up vacancies.

36. Registrars to attend each judge of the Court as Lord Chancellor, &c., shall direct. In case of illness they may appoint a deputy.

37. Clerks to the registrars increased to twelve. Vacancies to be filled up by seniority. Lord Chancellor empowered to fill up vacancies in office of twelfth clerk to the registrars.

38. Preserving rights to the present registrars and clerks.

39. Proviso as to succession of sworn clerks, &c.

40. Office of master of reports and entries

41. Duties of registrars and clerks.

42. Accountant General empowered to appoint additional clerks, 55 G. 3, c. lxiv.

43. Masters, Registrars, and clerks to registrars, to hold their offices during good behaviour; and, with other officers, to be subject to prohibitions, &c.

44. Repeal of certain powers of 3 & 4 W. 4, c. 94.

45. Salaries to registrars, and clerks, and masters and clerks, paid out of Suitors' Fee Fund.

46. Compensation to Master of Exchequer and other officers of Court of Exchequer, to be paid out of Suitors' Fund in Chancery. Account of compensation to be laid before Parliament.

47. Interpretation clause.

48. Act may be altered, &c.

**The SCHEDULE referred to by the foregoing act.**

#### Salary.

The First Registrar - - £2,000 per ann.

The Second, Third, and

Fourth Registrars - 1,800 per ann. each.

The Fifth, Sixth, Se-

venth, and Eighth Re-

gistrars - - - - 1,500 per ann. each.

The Ninth and Tenth

Registrars - - - 1,250 per ann. each.

The First and Second

Clerks to the Regis-

trars - - - - 800 per ann. each.

The Third, Fourth, Fifth,

and Sixth Clerks to

the Registrars - - 600 per ann. each.

The Seventh, Eighth,

Ninth, and Tenth,

Clerks to the Regis-

trars - - - - 400 per ann. each.

The Eleventh & Twelfth

Clerks to the Regis-

trars - - - - 300 per ann. each.

The Chief Clerk to the

Master in Ordinary in

Chancery appointed

under this act - - 1,000 per ann.

The Junior Clerk of

such Master - - - 150 per ann.

#### PLAN FOR REMEDYING THE DELAY OF THE COURT OF CHANCERY.

MR. ROBERT MONTAGU HUME, a solicitor of the Court of Chancery, has just published a short statement, from which we make the following extracts.

The average periods of the progress of an ordinary suit, embracing references and inquiries before the Master, may be thus calculated:—

Two years in bringing the suit to issue.

Two years, when set down for hearing, before it can be heard.

**Two years to six years in the Master's office.**

"Two years before the further directions can be obtained. • • •

"It was formerly the policy to throw the blame on the Solicitors, and every possible vituperation was heaped on their undefended heads, while the true cause of the delay was most sedulously concealed.

"The true cause of the delay is that the Court of Chancery has become the forum for administering justice in almost every case where property is concerned. That our commercial relations—our improvements—and increase of population, have increased the business of the Court at least ten-fold in a period of fifty years, and that the limited number of the Judges and Masters is not at all adequate to this increase.

"One subject has been frequently referred to as an evil equal to that of delay—namely, the expence of proceedings in Equity. This has been a favourite topic for reform, and the attention has been more applied to this than to the real grievance—the delay. This has been a fatal falacy, because the attention to economy has diverted the reformation from the prominent and more important evil. • •

"It is a fact known to almost every solicitor, that the suitor frequently declares that the delay, and not the expence, is what he so justly complains of, and that the expences however great, would be readily borne, if the delay could be removed, and a speedy termination of his suit could be obtained by a reformation of the Court.

"I maintain, and am able to prove, that the delay arises only from the increased and enormous business of the Court, and that no blame for that delay is or can be imputed to the Judges—the Masters—the Officers—or the Solicitors. The blame, if any, attaches to those who are aware of the cause of the delay, and possessing the power to remove it, do not by strenuous exertions effect a complete and substantial reform.

#### THE COURTS.

**Facts.**—That the cause of the delay is the overwhelming business of the Court of Chancery.

"That the three Judges, notwithstanding their constant and unremitting attention to the progress of the hearing of causes before them, cannot promptly perform the vast variety of the business :

"That the suitor has a positive right, by the justice of every civilized country, to have his case heard as soon as it is ripe for hearing.

"That the present number of the judges is wholly inadequate to meet the extent of the business.

"That the best interests of the country will be consulted by the appointment of such an additional and sufficient number of judges as shall fully meet the exigency of the extended business of the Court :

"That the right of appeal from the decision of a single judge be secured to the public :

"That the appeal from one judge to another

is not a satisfactory mode, as it is merely the separate decision of two single judges, however valuable either opinion may be :

"That the appeal to the House of Lords is attended with delay and great expence, and that this right of appeal, in minor cases, frequently amounts to a denial of justice :

"That the political changes in this country have created a number of unemployed eminent judges, whose services are now partially obtained for the benefit of the country, while an expence by their retirement has been imposed on the country.

**Propositions.**—That the Courts of the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor, and of any additional judges, be perfectly independent of each other :

"That each Court possess the jurisdiction in bankruptcy, as formerly possessed by the Lord Chancellor and Vice Chancellor, but independently of each other :

"That the present Court of Review be discontinued :

"That a register of causes be nominated, to have the regulation of setting down causes and all matters for hearing, in order that each court may have its proper proportion of business, as near as possible :

"That the right of appeal to the House of Lords, or from the Rolls, or the Vice Chancellor be discontinued :

"That a Court of Appeal be created, to be called 'The High Court of Appeal of Great Britain and Ireland,' to consist of four judges, of which the Lord High Chancellor be the chief, and that three of them form the Court :

"That the judges of the High Court of Appeal be appointed from the retired judges, and such other eminent persons from time to time as may be necessary :

"That the High Court of Appeal possess the same jurisdiction and power as the House of Lords, with regard to appeals from the English, Irish, and Scottish Courts of Equity and Law :

"That a second Court of Appeal be established, to be called 'The Court of Appeal in Equity and Bankruptcy,' consisting of three Judges :

"That this Court of Appeal have jurisdiction of appeal over all matters of an interlocutory nature, and in all matters in bankruptcy.

#### THE MASTERS' OFFICES.

**Facts.**—That the delay in the Masters' offices arises principally from the number of references, the labour of proceeding upon them, and the want of a sufficient number of Masters :

"That the mode of performing the business in the Masters's offices is equally an occasion of delay.

**Propositions.**—That an additional number of Masters are requisite to assist in the removal of the delay in the Masters' offices :

"That the present system of warrants be wholly done away with, and that the Masters and their clerks proceed on each matter of business continuously and uninterruptedly, in

the same mode as business is heard and disposed of before the Court. \*

"With respect to the increase in the number of the Judges and Masters, and the formation of the Courts of Appeal, very little additional expence will be incurred, and although further appointments will be requisite, the pensions already enjoyed by some of the Judges will become usefully employed. But whatever may be the expence, the country demands the improvement.

"As the High Court of Appeal will become a court of the greatest importance, a liberal and proper allowance to the Judges should be fixed consistent with the dignity of such a court. The present pensions of the retired Judges, eligible for that high office, should be deemed part of the allowance to those Judges as presiding in that court.

"As regards the additional masters, the fee fund of the Court, or the dead fund of the Court, possess ample resources.

### LORD REDESDALE'S COPYHOLD BILL.

LORD REDESDALE has introduced into the House of Lords a Bill "for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and of other Lands subject to such Rights; and for facilitating the Enfranchisement of such Lands." His Lordship is a member of the Select Committee to which Lord Brougham's Bill for the Enfranchisement of Copyholds was referred in the present Session (see *ante*, p. 257), and we presume that the present Bill has the sanction of some of the other members of that Committee; and we conceive that, if Lord Brougham had been in this country, it is not improbable it would have been brought into the House of Lords as the Bill amended by that Committee. The framer of the present measure has taken for its ground-work Mr. Stewart's Bill, as it passed the House of Commons in the last Session, and was discussed in the House of Lords.\* At the close of that discussion Lord Lyndhurst said that he only disagreed with some of its details, and would be willing to assist in framing and passing a similar measure in principle next Session; and we now propose to shew in what the present Bill differs from Mr. Stewart's, as last amended by him. The machinery by which the measure is to be worked—the Tithe Commission—is the same in both Bills, and the general wording of the clauses is also the

same, so much so that, unless read with attention, they might appear to be the same; and obviously the endeavour has been to alter as little as possible, there being not more than half-a-dozen new clauses added. There are, however, two considerable changes: the first one is, that instead of enabling two-thirds in value and a majority in number of the tenants, with the concurrence of the lord, to effect an enfranchisement of the lands, i. e. to convert the copyholds into freehold, a commutation of the rents, fines and heriots, and the lord's rights in timber only, is to be made, *and the tenure is to remain unaltered*. The other great alteration is, that the consideration for the commutation is not to be a gross sum of money, but a payment of an annual sum by way of rent-charge, and a small fixed fine upon death or alienation, not to exceed the sum of 5s. It is to be observed, however, that the present Bill leaves untouched all those clauses in Mr. Stewart's Bill which provided for partial or general enfranchisements under the direction of the Tithe Commission, on the application of the parties, and which we always considered a most valuable part of that gentleman's measure. To all this portion of the Bill we conceive there will be no objection by any one; but how far the alterations in the Bill will be approved of by the profession and the public remains to be shewn. One main object of the promoters of all recent measures for enfranchisement has been to abolish, or, at any rate, to decrease, the tenure of copyholds, and establish a uniformity in this respect throughout the country. "We consider it a matter of great importance," say the Real Property Commissioners in their Fourth Report, "that all lay fees should be held by free and common socage."<sup>b</sup> Still we are quite willing to admit that the reducing all fines into fines certain, and commuting heriots and other burdensome rights of the lord, would be attended with much advantage. This would doubtless remedy some of the evils attending the present system of copyhold tenure, and if this is all that the legislature is disposed to grant, we are not sure that the friends of the measure should not accept it, introduced as it is, and with almost the certainty of being able to carry it, in the present

<sup>b</sup> 2 Monthly Record, p. 308. "I think it very desirable that copyholds should be abolished, and that all lay fees should be held by one or similar tenures." Mr. Tyrrell's Suggestion, p. x.

\* See the debate, *ante* p. 85.

session, especially as by s. 39, if valuers be not appointed within six months after the confirmation of any agreement for commutation, the commissioners may appoint valuers.

We now therefore submit an analysis of the new Bill to the consideration of our readers. It is at any rate a great advance on the Bills introduced by the Attorney General for several sessions, and may be considered as a concession of the lords of manors, to meet the general feeling in favour of enfranchisement, and, as such, is entitled to great attention.

#### ANALYSIS OF THE BILL

**For the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and of other Lands subject to such Rights; and for facilitating the Enfranchisement of such Lands.**

**1. Preamble, and appointment of commissioners.**—After reciting that it is expedient to provide the means for an adequate compensation for the rents, fines, and heriots payable in respect of lands of copyhold and customary tenure, and of other lands subject to such payments, or any of them, and for facilitating the voluntary enfranchisement of such lands, it is enacted, that "the Tithe Commissioners for England and Wales" for the time being shall be the commissioners for carrying the act into execution, and that should the act not be carried into execution before the tithe commissioners cease to act, other commissioners may be appointed, &c., with power to supply vacancies.

**1. Style of commissioners, seal, &c.**—Enacts that the commissioners shall be styled "The Copyhold Commissioners," and shall have their office and seal, and that instruments sealed are to be received in evidence, &c.

**3. Report to Secretary of State, &c.**—Commissioners to report to Secretary of State, and annual report to be laid before Parliament.

**4. Assistant commissioners, &c.**—Power to appoint and remove assistant commissioners, secretary, &c.

**5. No commissioners or assistant commissioners to sit in House of Commons.**

**6. Operation of act limited to ten years.**

**7. Salaries and allowances of commissioners, assistant commissioners, secretary, &c.**

**2. To be paid out of Consolidated Fund.**

**9. Declaration.**—Commissioners and assistant commissioners to make declaration before acting.

**10. Commissioners may delegate powers.**

**11. Manors and lands vested in Crown.**—Provision is made for cases in which manors or lands are vested in the Crown generally or in right of Duchies of Lancaster or Cornwall.

**12. Disabilities of lords or tenants provided for.**

**13. Power to appoint attorney.**—An attorney may be appointed, and at the first meeting the power, or a copy, shall be delivered to the chairman.

**14. Power to call a meeting, &c.**—Any one or more of the lords or tenants, whose interest shall not be less than one fourth of annual value of manor or lands, may call a meeting of the lords and tenants (by notice to be affixed twenty-one days before the meeting on principal or outer door of church or parish within the limits of which the manor or greater part in value extends, or on door or conspicuous part of some house or building where Courts usually held, and twice advertised in some newspaper, or once in each of two newspapers generally circulated in the county), for the purpose of making an agreement for the general commutation of the rents, fines, and heriots thereafter to become due in respect of lands holden of such manor, and of the lord's rights in timber; and every lord or tenant present at such meeting shall bear his own expence of attendance; and the lords and tenants present at such meeting, the latter of whom being not less than a majority of the tenants in number, and the lord's and tenant's interest in the manor and lands not being less than two thirds of the annual value thereof, may proceed to make and execute an agreement for commutation of the rents, fines, and heriots thereafter to become due in respect of the lands holden of the manor, and of the lord's rights in timber; and if so expressly agreed between such lords and tenants, the commutation may be made to extend to rights in mines and minerals, but otherwise shall not extend to affect such rights.

**15. Terms on which agreement may be made.**—Such agreement may be entered into for commutation of the lord's rights on payment to him of an annual sum by way of rent-charge, and of a small fixed fine upon death or alienation, in no case exceeding five shillings: the rent charge to commence (except where otherwise directed by the commissioners) from the same date, and to be valued and variable (when exceeding twenty shillings) according to the price of corn, in the same manner as the tithe commutation rent-charge; and the amount of the rent-charge may be fixed by the agreement, or separate rent-charges may be agreed upon between lord and tenant, or the rent-charge may be subject to diminution or increase to such an amount *per centum* as shall be agreed on: and the agreement may determine the apportionment for each tenant, or the rent charge and apportionment may be left to be fixed by valuers, subject to the approbation of the commissioners.

**16. A provisional agreement may be made.**

**17. Proportional interest how to be computed.**

**18. Power to adjourn meetings,** but notice of adjournment to be once advertised.

**19. Agreement to bear date the day on which the first signature shall be attached to same, or minutes thereof, and to be in such form as the commissioners shall from time to time direct.**

20. *Commissioners to frame and circulate forms.*

21. *Commissioners or assistant commissioners may attend meetings, and advise terms of agreement.*

22. *Suits and differences may be referred to arbitration.*

23. *Commissioners to require consents of ecclesiastical corporations, or other bodies whose interests appear to be affected, to be annexed to the agreement.*

24. *Agreements to be confirmed by commissioners.*

25. *Appointment of valuers.*—At meeting, or adjourned meeting, valuers to be appointed to make valuations, apportionments, and schedules, as follow; (*i. e.*) if the commutation is in consideration of a rent-charge payable to the lord and fixed by the agreement, the tenants to appoint; and if majority in number and value do not agree, then two or other even number to be appointed, half by number and half by value; and when the commutation is not in consideration of a fixed rent-charge, half the valuers to be appointed by the lord and half by the tenants.

26. *Valuers to apply to the commissioners for instructions, and are then to proceed to ascertain value of lands, and make out and send to office of commissioners such valuation, with power to appoint umpires.*

27. *Power to enter lands, &c.*—Valuers and umpires to make declaration before acting.

28. *Steward to furnish information, for the purpose of enabling valuers to make valuation, and otherwise to facilitate commutations under the act; the steward shall, on request by valuers or chairman of meeting, make a correct statement in writing of—*

'The tenants of the manor:

Description of their lands:

The amount of assessment to poor rate:

Amount received for heriots in respect of each tenant, for three times previous:

And any other information which the commissioners shall direct:

Shall produce same for inspection at the meetings, and allow extracts to be taken, and, upon request by valuers, deliver to them a copy of such schedule, or the parts which they may require for such statements and extracts; the steward to receive such sum as shall be agreed on, and four-pence for seventy-two words, for copies or extracts.

The steward shall also within three calendar months, or such time as the commissioners shall fix, make out and send to them a schedule of—

The names of the several tenants of the manor:

To which class belonging:

Their residences:

Their descriptions:

Their ages, as nearly as he can ascertain the same:

When more than one tenant, whether admitted as joint-tenants, or how otherwise:

The description of the lands:

Whether copyhold, customaryhold, subject to fines, or customary freehold:

In what parish situated:

To what amount assessed, or assumed proportion if rated, with other lands [as in previous schedule]:

Amount of quit or free rents:

Whether held at fines arbitrary on death and alienation; at fines certain, or how otherwise:

Whether subject to heriots, and how:

Amount received for each of three last heriots for each tenement:

Whether subject to rights in timber, and what; a number to each tenement:

The number of changes of tenants on each tenement, subject to fines payable on death or alienation, during the last seventy, or such other number of years [as fixed on]:

The number of changes of tenants during the like period, on each tenement, subject to fines on death only:

And add such other information as commissioners may direct.

Power to make inquiries by post as to ages of tenants, and enactment that tenant refusing to give information shall not afterwards be allowed to object to age stated, and penalty on giving untrue statement.

Steward to give from time to time such other information to commissioners as they may require, with penalty on default.

29. *Valuers to take particular circumstances of each case into consideration.*

30. *Schedules of valuation to be deposited for inspection, and meeting to determine objections.* Copies of schedules by valuers to be lodged with steward, for inspection by all interested parties, without charge, and notice to be given as commissioners may direct, with penalty on refusal to disallow inspection.

Notice to fix time for hearing objections, and at such meetings objections to be heard and determined by assistant commissioner, with power to adjourn when requisite, and direct any further valuation. &c., to be made.

No lord of a manor to be allowed to object without giving ten days, and no tenant without giving five days, previous notice of the intention to object; such notice from a tenant to be left with the steward, and inspected by other parties with schedules; forms of notices to be supplied to steward, and by him delivered to party applying.

After bearing and determining objections, assistant commissioner to amend schedules, and power to him or commissioners to amend such valuations or schedule as to alterations by deaths, change in ages, &c., on satisfactory proof, by affidavit or otherwise, that such alterations are requisite.

31. *Expenses of proceedings for effecting any commutation under the act* (except where from special circumstances the commissioners shall direct otherwise) shall be payable as follows: where the valuers shall be appointed by the tenants, the costs of valuation and schedules shall be paid by the tenants rateably according to their interest; but where the valuers shall be appointed by the lord and tenants,

then, if only two appointed, the lord shall pay one half and the tenants one half; and where more than two shall be appointed, the lord shall pay one third, and the tenants two thirds; and in case of a dispute as to costs the commissioners shall have power to decide the same.

**32. Schedule to be made by the commissioners.**—Forthwith, after receipt of the schedules settled and amended, the commissioners shall cause a schedule to be made of the apportionment to be made of the sums to be paid by each tenant.

**33. Schedule of apportionment to be inspected; errors pointed out and rectified, and then confirmed.**—The commissioners shall forthwith, after making such schedule, cause a copy to be deposited with the steward for inspection by all parties interested: Notice is to be given of such deposit, and steward to allow inspection under a penalty for default; parties interested may give notice of any errors to the steward, who must send them with the copy apportionment to the commissioners, at the expiration of the time appointed for inspection; the commissioners shall then inquire into and rectify such errors, and cause the apportionment to be engrossed, and annex any plans or schedules thereto required for elucidation thereof, and confirm the same under their hands and seals.

**34. Copies of confirmed apportionment to be deposited with steward and clerk of the peace.** Two copies of every confirmed apportionment, with documents annexed, to be made and sealed by the commissioners; one copy to be deposited with the steward, and kept with the court rolls, and the other with the clerk of the peace for the county or jurisdiction within which the manor or greater part in value, computed as aforesaid, shall be situated, to be kept by him and his successors; and all persons interested therein may have access to the said copies respectively, and have copies or extracts thereof on giving reasonable notice and paying two shillings and sixpence for each inspection, and three-pence for every seventy-two words in such copies or extracts; the statements in such apportionment, &c., to be received as evidence; and deposit to be notified by advertisement as commissioners may direct.

**35. Notice to parties.**—The commissioners, before confirming any agreement, valuation, assessment, schedule or apportionment, may require notice thereof to be given in such manner as they shall direct, to the person next in remainder, reversion, or expectancy of an estate of inheritance in any manor or lands, or any other person to whom they may think notice ought to be given, and by themselves or assistant commissioners hear and determine any objection made to such confirmation by any person so interested, and may direct any amendment accordingly.

**36. Commissioners may correct errors with consent.**

**37. Lands to be discharged from rents, fines, and heriots, and rights in timber, and a rent-charge and fixed fine to be paid in lieu thereof.**

—This discharge is to take place from the first of January next following the confirmation of the apportionment; and from that day, or from such time as shall be fixed by the commissioners, a rent-charge is to be payable, and a fixed fine upon death or alienation, to be stated in the apportionment; the rent-charge (when it shall exceed twenty shillings) to be valued in bushels of wheat, barley, and oats, and variable according to the prices of such grain, in the same manner as the tithe commutation rent-charge.

**38. Schedule of apportionment to specify in what events any rent-charge is to be increased or diminished.**—Where, by the agreement, a rent-charge shall have been made subject to increase or diminution in certain events, the schedule is to state the events in which such alteration in the rent-charge is to take place.

**39. Power to commissioners to appoint valuers.**—If within six months after confirmation of agreement, no valuers shall have been appointed, or the valuation shall not have been made and sent to the commissioners, the commissioners may appoint valuers.

**40. Commissioners may hear and determine disputes and settle boundaries.**—If any action or suit shall be depending touching the right to or amount of any fines, other manorial payments or incidents, or any question shall arise thereon, or as to the boundary of any lands holden of the manor, or precise situation of such lands as shall be intermixed with other lands, or the exact quantity of the lands so holden, or any difference shall arise whereby the proceedings to effect any commutation shall be hindered, the commissioners or assistant commissioner may appoint a time and place in or near the manor for hearing and determining the same, and inquire into, hear, and determine such right or amount, or such question; and their or his decision shall be binding and conclusive on all persons to whom twenty days' notice of the time, place, and intent of such meeting shall have been given or left at his abode, or with the occupying tenant for omitting to send the notice to his landlord, or party for whom the same shall be left, and such tenant shall be liable to make good to such party all damage which he may sustain by such default.

**41. Subject to appeal by issue at law, or on case stated.**—Appeal, &c. given where matter in dispute shall exceed the sum of ten pounds annual value.

**42. Proceedings not to abate by death of parties.**

**43. In case of death, actions to be brought, &c.**

**44. Statute of limitations not to be affected.**—Nothing in act contained to revive any right to fines or other manorial claims now or hereafter barred by any law in force for limitation of action or suits.

**45. Power to summon witnesses, &c.**—Power to summon witnesses, call for returns, production of deeds, &c.

**46. Expenses of Witnesses, &c.**—Commissioners or assistant commissioner may order

expenses of witnesses and of production of books, deeds, court rolls, &c., and all other expenses (except salaries or allowance to commissioners or assistant commissioner) incurred in settlement of any suit or difference, or in hearing or determining any objections, &c. to be paid by such interested parties, and to such parties as they or he may think fit and reasonable.

47. *Tenant paying rent-charge to be allowed the same in account with his landlord.*

48. *When rent-charge is in arrear for twenty-one days after half-yearly day of payment, the person entitled may distrain.*

49. *When rent-charge is in arrear for forty days after half-yearly day of payment, and there shall be no sufficient distress on the premises liable to it, a writ is to be issued by a judge at Westminster, directing the sheriff to summon a jury to assess arrears.*

Upon the execution of this writ the owner of the rent-charge may sue out a writ of *habere facias possessionem*, directed to the sheriff, who is to deliver possession of lands to such owner, who may hold them until arrears and costs (the arrears not being more than two years arrears above the time of possession) shall be satisfied.

50. *Account how to be rendered.*—The Court out of which the writ shall have issued, or any judge at chambers, may order the owner of the rent-charge to account for the rents and profits of the lands, and to pay over the surplus (if any) to the person entitled, and thereupon a writ of *supersedeas* is to issue. Court or judge, by rule or order, may give summary relief.

51. *Powers of 4 & 5 Will. IV. c. 22. to extend to rent-charges under this act.*

52. *Rents, fines, heriots, or other manorial rights, which may be subject of commutation, due before the commutation, not to be effected.*

53. *Power to effect a voluntary commutation.*—The lord and any one or more tenant or tenants of any manor (whatever may be their respective interests) may enter into an agreement, with the consent of the commissioners, for the commutation of the lord's rights to rents, fines, and heriots, and any other of the lord's rights, in consideration of a rent-charge, variable as before-mentioned (where it shall exceed twenty-shillings), and of a small fine certain (not exceeding five shillings) on death or alienation.

54. *Power to lords and tenants to effect voluntary enfranchisements.*—For the purpose of affording to the lords and tenants respectively the opportunity of obtaining an enfranchisement of their respective lands, it shall be lawful for the lord and tenants of any manor (whatsoever may be their lawful interest therein), with the consent of the commissioners under this act, to enfranchise any of the lands holden of the said manor, in consideration of a sum of money to be agreed on between them and the tenants affected, and certain facilities are given to such enfranchisements.

55. *How such enfranchisements may be effected.*—Every enfranchisement shall be made by such conveyance, deed, or assurance as would be adopted for effecting such enfranchisement if the lord were seised of the manor

for an absolute estate of inheritance in fee simple in possession.

56. *Commissioners, before giving their consent to the agreement, shall, upon the written request of any three or more tenants, parties thereto, satisfy themselves of the title to the manor; and the expences of that investigation, as well as the general expences, shall be borne by the parties, as may be agreed upon; and in default, as the commissioners shall direct.*

57. Where the lord is entitled only for a limited interest, or shall be under disability, the purchase money to be applied in manner after provided for.

58. *Power to tenants for life, and tenants whose lands are not of more than the annual value of 20l., to defer, in certain cases, payment of a portion of the consideration for enfranchisement until the next event at which a fine would be payable.*

59. When the sum becomes due, the lord shall be entitled to the rents and profits of the land, and may proceed to obtain possession.

60. *Power to tenant to defer payment of consideration for enfranchisement.*—For purpose of freeing tenants of manors from the inconvenience to which, in certain cases, they might be subject, by an immediate liability to payment of the sums to be awarded to the lord of the manor under the act, it shall be lawful for any tenant, at any reasonable time after the execution of agreement for enfranchisement (to be fixed by the commissioners, or, in default of their fixing any other limit, at any other time or until within ten days next previous to the delivery by the steward to the commissioners of the schedule of apportionment,) to declare by notice under his hand, to be delivered to the lord or steward, as in case of other notices, his desire that such compensation shall remain a charge on the lands affected thereby for any number of years not exceeding fourteen, or as to tenants for life, for the whole period of his life, and one year longer; and which notices the said steward shall forthwith, or with the schedule of apportionment, send to the commissioners; and thereupon the said commissioners, with the consent of the lord, but not otherwise, shall insert, in a column of the apportionment to be appropriated to that purpose the number of years or period for which such charge is to be continued, and thereupon (subject as after mentioned) no proceedings shall be instituted during such term or period to enforce payment of the principal money so apportioned: Provided nevertheless, that lawful interest shall be payable and paid half-yearly on the days to be mentioned in such apportionment, or, if not mentioned therein, at the expiration of each half-year, computed from the date thereof, and that such proceedings may be instituted, and nothing in the act contained shall extend to protect any tenant or other person from such proceedings, in case one and a half-year's interest shall remain due on the said principal sum apportioned, or any part thereof, to the extent of one-half: Provided also, that during

the term or period so fixed, the lord shall not be compellable to receive payment of the principal money without receiving twelve calendar months notice of intention to pay off the same, and that in case the interest on such principal sum, or any part thereof, shall at any time or times be in arrear thirty days, it shall be lawful for the lord or party for the time being entitled to receive such interest money, to levy the same by distress and sale of the goods on the lands and tenements enfranchised and affected by such enfranchisement money, or any of them, in like manner as for rent in arrear and subject to recovery by distress.

61. Where payments are deferred by tenants, provision made as to lords being tenants for life.

62. *Substituted titles.*—The lands enfranchised shall be deemed to be held under the same title up to the time of enfranchisement as that under which the same were held at the time of the enfranchisement, and shall not be subject to any estates, rights, titles, interests, incumbrances, claims, or demands affecting the manor of which the same were holden.

63. *General expences and recovery.*—Expences attending commutations or enfranchisements (except otherwise provided for) shall be paid as commissioners may in apportionment or otherwise under their hands and seals direct; and if any difference shall arise as to amount to be paid by or to any person, the commissioners or assistant commissioner may, under their or his hand, certify amount: and in default of payment the same may, on production of certificate, or of a deposited copy of apportionment, be recovered before two justices of peace, by distress and sale, with costs of application and proceedings.

64. *Action for expences.*—If expences not levied within two months after warrant of distress granted, the person entitled (if amount including costs of distress shall equal forty shillings), his executors, &c. may recover same, with cost of suit, in any Court of Law at Westminster, against party named in certificate or apportionment, his executors, &c., in which action such certificate or copy of apportionment shall be satisfactory evidence of the amount of such expences, and of the same being due from and to the parties therein named; and the certificate of two justices under their hands, which they are required to give in such cases, shall be satisfactory evidence of non-recovery of such expences and costs under the distress.

65. *Expences of Trustees.*—Every tenant of the manor being a trustee (save as against an unadmitted mortgagee) shall be entitled to recover in like manner by distress or action respectively all expences, costs, and charges which he may have to pay under any such certificate, apportionment, distress, or action, from the person beneficially interested, at the date of such apportionment, in the lands, his executors, &c. or by like distress on the lands, and the occupiers thereof shall be entitled to deduct any such payments from any rent then or subsequently due; and should any dispute

arise as to any trusteeship or right to recover, the same shall be determined by the commissioners or assistant commissioners, as in the case of causes of difference before mentioned; the like evidence of certificate, &c. to be admitted in any such proceedings or action.

66. *Copyholders, &c. having limited interests, may charge costs in certain cases.*—Tenants having limited interests may, with consent of commissioners, by a simple entry on Court Rolls, charge the lands with the costs and interest, the principal being however reduced one twentieth each year; the steward to charge only thirteen shillings and sixpence for such entry and copy, which is not to be liable to stamp.

67. *Expences payable by lords of manors.*—Expences payable by lords having partial interests, or being trustees, may, together with reasonable expences incurred in employing agents to protect their interests (in cases of commutation), be in like manner charged upon the manor, with interest at four per cent.; but the expences of agents must have been previously approved by the commissioners.

68. *Lands to be charged with enfranchisement considerations as on mortgage in fee.*—From and immediately after date of final confirmation of apportionment the several and respective lands holden of the manor shall stand chargeable with the respective sums mentioned in the apportionment as payable to the lord and steward respectively, with lawful interest from that day until payment; and the person or persons for the time being sei-ed of the manor shall be deemed to be seised of the said lands as mortgagee in fee thereof for the benefit of the lord as to the sums payable to him, and of the steward as to the sums payable to him; and that (subject to the power of continuing the charge at the option of the tenant as hereinafter provided,) it shall be lawful for the person so seised, or the lord or steward respectively in his name, from time to time to adopt such means and proceedings as a mortgagee in fee of freehold lands is entitled to, for the enforcing payment of such principal sums and interest, and with the like right to obtain payment of all attendant and incident costs.

69. *To be first charges.*—Such sums shall be first charges, and have priority over all mortgages, charges, and incumbrances, &c.

70. *Power to mortgage.*—Any tenant whose lands shall be enfranchised may charge the same (or any of them, if he holds all under same right and for same estate,) with payment of such sums and costs of such charge and lawful interest, to any person advancing same and his executors, administrators, and assigns, and for securing payment thereof to demise lands by way of mortgage, for any term of years to such person, his executors, &c. or to such other person as he shall appoint; such demise to be made with a proviso or condition, declaring the term to be void on payment of the amount thereby secured, with interest, of a time to be therein appointed, and such

charge shall have the like priority, &c. with powers and rights of first mortgagee.

71. *To whom monies for enfranchisement from lord's rights to be paid.*—Monies to be received for enfranchisement from lord's rights to be paid to lord, his heirs or assigns, when absolutely entitled in fee; but when for limited estate or interest, or under legal disability, to be paid as follows: if it amounts to two hundred pounds, to be paid into the Bank of England under the 1 G. 4, c. 35.

72. When less than two hundred pounds, and more than twenty pounds, to be paid into the Bank of England, or to trustees at the option of the parties.

73. Where twenty pounds, to be paid to the person entitled to the rents and profits.

74. *Payment to Steward.*—Sums payable to the steward for compensation to be paid to him, his executors or administrators.

75. *Receipts to be discharged.*—Receipts of persons to whom money directed to be paid to fully discharge person making payment; and, for better evidencing payment, the steward shall, as to his compensation, forthwith after payment, and, as to payment for enfranchisement from lord's rights, forthwith after production of receipt for the same, signed by the party entitled to sign the same, enter, on the copy apportionment to be deposited with him as aforesaid, a memorandum of such payments; and such memorandum shall be sufficient evidence of such payments, and discharge lands and person paying from the sums therein mentioned to be paid.

76. *After confirmation of the Apportionment &c., in cases of commutation, the customary modes of descent to cease, and the lands to descend and to be subject to dower and courtesy in like manner as freehold lands.*

77. *Lands to become freehold &c.*—From and after final confirmation of apportionment or the execution of the conveyance in the case of any enfranchisement under this act, the lands therein comprised shall, subject to the payment of the enfranchisement consideration in favour of lords and stewards as aforesaid, become and be of freehold tenure, and all mortgages affecting the same shall be deemed and become mortgages in fee of the same lands, if such enfranchisement consideration shall be paid off; and, if not so paid off, mortgages in fee of the equity of redemption thereof, subject to such mortgage estates respectively as aforesaid, for securing such consideration; provided that nothing in the act contained shall operate to deprive any tenant of any commonable right to which he may be entitled in respect of such lands, but such right shall continue attached to such lands notwithstanding the same shall become freehold.

78. *Reservation of lord's other rights.*—The act not to affect rights of lords of manors to escheats, fairs, markets, apportionments, franchises, royalties, rights of chase and in game, fisheries, &c., or any rights in mines or minerals, save that the person whose lands shall be enfranchised, his heirs, &c., shall have right to

dig for, raise and get stones, lime, slate, clay, brick-earth, turf, or peat.

79. *Lords of manors or their stewards, may, after 31st December 1840, hold customary courts, although no copyhold tenant be present.*

80. *Lords, or their stewards, may, after 31st December 1840, make, out of the manors, and out of court roll, grants of lands to be held by copy of court roll.*

81. *Lords or their stewards, may, after 31st December 1840, grant admissions out of the manors and out of court.*

82. *After 31st December 1840, every surrender, &c., delivered to the lord or steward, and every fact proved to the lord or steward, at any court whereat a homage shall not be assembled, shall be forthwith entered on the court rolls.*

83. *After 31st December 1840, presentment by the homage shall not be essential to the validity of an admission.*

84. *Agreements, &c., not to be liable to stamp duties.*—No agreement, award, schedule of apportionment, or power of attorney made, or confirmed, or used under this act, chargeable with any stamp duty.

85. *Correspondence of commissioners relating to this act to be free of postage.*

86. *False evidence to be deemed perjury. Withholding evidence a misdemeanor.*

87. *Limitation of actions against commissioners, assistant commissioners, justices of the peace, &c.*

88. *Proceedings under this act not to be quashed for want of form, nor to be removed by certiorari.*

89. *Limits of act.*

90. *Act may be altered this session.*

91. *Interpretation clause.*—In construction of act, unless something in subject or context repugnant to such construction, the words after mentioned, or similar words, to extend to and be construed as herein provided; (that is to say,) The word "manor" shall extend to manor or reputed manor, of whatsoever tenure the same may be.

The words "lord" and "steward" shall include the person or persons for the time being filling those respective characters or acting in those respective capacities, whether those persons shall be lawfully or rightfully entitled to fill such characters or act in such capacities or not.

The words "tenant" or "tenants" shall extend to and comprise persons holding by copy of court roll or as customary tenants, or holding lands subject to any manorial rights, and whether holding to them and their heirs, or for life, or in any other manner whatsoever.

The words "land" or "lands" shall extend to and comprise all lands, of whatever tenure, holden of the manor, and whether the interests therein to be affected shall be an estate of inheritance in fee, or for life or lives, absolute or qualified, or for any other estate or interest whatsoever.

The word "enfranchisement" shall mean

and include the commutation or discharge of all lands holden of a manor from heriots or any other manorial rights.

The word "person" or "party" shall extend to and include the Queen's Majesty, and any body politic, corporate, or collegiate as well as an individual.

Every word importing the singular number only shall extend to and include several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse.

And every word importing the masculine gender only shall extend to and include a female as well as a male.

## NOTES ON EQUITY.

### COMPENSATION FOR ARREST.

THE following case lays down a rule on a point of some interest.

A motion made on behalf of the plaintiff, having been refused with costs, the costs were taxed, and an attachment for nonpayment was sued out by the defendant; under this attachment the plaintiff was arrested and imprisoned for a day. On the 22d of November, the certificate of the Master, together with the *subpoena* and the attachment, were set aside for an irregularity in the mode of taxation; and the defendant was ordered to pay to the plaintiff, his costs, charges, and expences occasioned thereby, and of the application: the Court at the same time intimated, that no action ought to be brought for false imprisonment. The plaintiff however, commenced an action against the defendant in the Common Pleas, for the recovery of damages for the false imprisonment. The Master of the Rolls said, that the plaintiff might have come to the Court, either for a reference to the Master to settle the amount of compensation for the injury suffered, or for liberty to bring an action, and that he ought to have done so in this instance; that this was a case in which the plaintiff knew that if he brought an action, the defendant would apply to this Court to stay the proceedings, and that therefore the plaintiff could not be allowed his costs at law; but a reference to the master ought now to be made, to ascertain what was a proper compensation by way of damages for the arrest and imprisonment, which, with the costs of this application, must be paid by the defendant. *Bricknell v. Stamford*, 1 Bea. 368.

### APPEAL FOR COSTS.

The general rule of a Court of Equity is, that an appeal does not lie for costs alone. But this rule will not be adhered to in certain cases. "I have no disposition," says Lord Cottenham, C., "to encourage appeals for costs only. This, however, is not simply a question whether any party shall pay or receive costs, but the case involves so much of principle, particularly as to ordering the fund in the first cause to be applied towards payment of

the costs of the second suit by a decree in the second cause only, that I think this case is within the exception to the rule. *Taylor v. Southgate*, 4 Myl. & C. 214; see also *Eyre v. Marsden*, *ibid.* 231.

## EXAMINATION AT THE UNIVERSITY COLLEGE, LONDON.

### FACULTY OF LAWS.—WINTER EXAMINATION, SESSION 1840.

1. What is the first process in a personal action?
2. What is the first process in a real action?
3. Over what actions have the Courts of Queen's Bench, Common Pleas, and Exchequer, a concurrent jurisdiction?
4. Over what actions has the Court of Common Pleas an exclusive jurisdiction?
5. To whom is the writ of summons directed?
6. What are the endorsements required to be made on a writ of summons?
7. What are the purposes for which a plaintiff may obtain a writ of *distringas*?
8. Under what circumstances is a plaintiff at liberty to enter an appearance for the defendant?
9. Under what circumstances may a *capias* be obtained against a defendant before final judgment?
10. To whom is the *capias* directed?
11. What is the effect of an arrest upon the defendant?
12. What security does a plaintiff obtain by arresting the defendant?
13. If after being arrested the defendant escapes, what remedy has the plaintiff, and against whom?
14. What is the difference between a negligent escape and a voluntary escape?
15. What is the principal distinction between an action of trespass and an action on the case?
16. What is the nature of an action of trover?
17. What is the difference between a simple contract and a special contract?
18. Are there any causes of action in respect of which a plaintiff has the option of suing either in *assumpsit* or debt?
19. Are there any causes of action in respect of which the plaintiff has the option of suing either in *assumpsit* or case?
20. Are there any causes of action in respect of which the plaintiff has the option of suing either in *assumpsit* or covenant?
21. In an action of *assumpsit* on a promise to pay the debt of a third person, what is put in issue by the plea of *non assumpsit*?
22. In an action of *indebitatus assumpsit* for goods sold and delivered, what is put in issue by the plea of *non assumpsit*?
23. In an action of *assumpsit* against a carrier for not delivering goods, what is put in issue by the plea of *non assumpsit*?
24. In an action upon the case against a carrier for the loss of goods delivered to him, what is put in issue by the plea *not guilty*?

25. By what process is the attendance of witnesses enforced?
26. Under what circumstances may secondary evidence be given of written documents?
27. What was the point decided in the case of *Omichund v. Barker*?
28. What is the rule as to the inadmissibility of a witness on the ground of interest?
29. Under what circumstances may the objection to a witness be removed by indorsing his name on the record?
30. What was the point as to the admissibility of evidence decided in *Price v. Lord Torrington*?
31. What were the two points as to the admissibility of evidence discussed in *Doe on the demise of Tatham v. Wright*?
32. What is a nonsuit?
33. What is the difference between a special verdict and a special case?
34. What is sufficient ground for a motion in arrest of judgment?
35. If new matter of defence arise after plea pleaded and before trial, in what manner can the defendant take advantage of it?
36. If new matter of defence arises after verdict, in what manner can defendant take advantage of it?
37. What lands may be extended under a writ of *ejectus*?

P. S. CAREY, Professor.

#### TITLE TO CORPORATION LEASES.

The investigation of titles to renewable leaseholds under corporations, seems remarkably relaxed in comparison with the strictness evinced in the examination of those connected with freehold property; that the land is held by lease from a corporation, seems quite sufficient with many practitioners of established reputation. Glancing at one of the corporations in Schedule A. of the Municipal Corporation Act, which, prior to its passing, had ordinarily granted leases of its possessions for terms of 75 years, on payment of fines and pepper-corn rents, we purpose making a few observations. The Municipal Act was the first-fruit of popular legislation, openly invading private rights, and high judicial authority has declared that it worked a material change in the interest of the old and new corporators; converting the *bona fide* ownership of the former into a strict and limited trusteeship in the latter. No comparison, therefore, can be drawn between them, on the score of right to exercise all the legitimate influence of property, because the exercise of that right by the old corporations, was a dealing with their own, whilst the carrying out the peculiar views of the new corporations is virtually a fraud (to use a parliamentary phrase) upon their constituents. Carefully avoiding then any further reference to the right of parties, to do what they please with their own, our readers will remember, that the great Borough Charter took effect from the 9th September, 1835, after which no corporation could legally ac-

cept a surrender of then existing leases, and grant a new one for 75 years, on payment of fines and peppercorn rents. The clauses bearing upon this question, are the 92<sup>nd</sup>, 93<sup>d</sup>, 94<sup>th</sup>, 95<sup>th</sup>, and 96<sup>th</sup>, to which we invite the attention of our readers, their prolixity alone preventing our setting them out. In fact, however, such leases were granted, but as we apprehend without authority, and if so, were invalid. The privilege of accepting surrenders of old and granting new leases, was too valuable to be relinquished by the reformed corporations, which soon discovered that the Municipal Act had deprived them of it, and therefore a clause was introduced into the 5 & 6 Will. 4, c. 104, the second section of which enacts, "That the power of disposition given to the council of any body corporate in the instances of demise for 75 years authorized by the said act, should extend to the demise or lease thereof, either at a reserved rent or a fine, or both, as the council should think fit." This act has only a prospective operation, and became law on the 20th August, 1836, conferring a power upon the new corporations they did not previously possess, and raises the question as to the validity of leases granted in the interval of the two acts. We submit that they were invalid, and that as there is no sound reason why the title of a valuable leasehold should not be traced for as long a period as that of a freehold, (be it forty or sixty years) no subsequent lease granted in consideration of the surrender of a former one can effectively cure them; and secondly, that the surrendered leases are in all probability the valid ones. This surrendering of old, and granting new leases, appears objectionable in principle, inasmuch as it facilitates the increase of litigation, and may be artfully used as a covering of fraud. True it is, that corporations by their town clerk or deputy town clerk, adopt a sort of judicial investigation previous to the granting of new leases; but this is an *ex parte* investigation, and affording no satisfactory security that all the evidences of titles are laid before the judge, who, amidst his other arduous labours, is to decide upon its validity. Besides which, we cannot altogether approve of attorneys acting as judges, because it is productive of dissatisfaction, if not of active litigation. The case of *Stephens v. Guppy*, 2 S. & S., (not to mention others) ought to be a lesson upon that subject. There a will had been made by a sender-maker, of an estate partly freehold and partly copyhold, which on the death of the testator, was shewn to an attorney, (the steward of the manor,) who, pronounced it "not worth a damn," in consequence of which emphatic opinion, it was thrown aside, and the heir admitted; the estate passed through several hands, and at last was sold to an individual, who hearing of the will, properly required its production, and on its not being forthcoming, successfully litigated the title. Future purchasers of these renewable leases may be equally astute and equally successful, and therefore the principle *caveat emptor* forcibly applies.

**PARLIAMENTARY PRIVILEGE.—  
THE PETITIONS OF THE BAR AND  
THE ATTORNEYS.**

Sir Edward Sugden on the 3d February presented to the House of Commons a petition signed by 521 members of the Bar, of whom 27 were Queen's Counsel or Serjeants at Law. The petitioners, he said, comprised persons of every shade of political opinion, and a very considerable number of the two great parties into which the state was divided. No document was ever entitled to more consideration than this petition. It came from a body who rarely interfered, and only on occasions of great importance.

The following is a copy of the petition:—

To the Honorable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble petition of the undersigned Queen's Counsel, Serjeants, and Barristers at Law,

Sheweth,

That your petitioners have heard with alarm of the recent proceedings of your Honourable House, in committing to the custody of the Serjeant at Arms, the persons who now hold the office of Sheriff of Middlesex, and also the plaintiff in an action brought against the printers of your Honourable House.

That your petitioners feel deep regret that punishment should be inflicted on a subject of the realm, for having brought an action in one of her Majesty's Courts in Westminster Hall, and on the officers of that Court, for having in the ordinary course of their duty, executed her Majesty's writ, in carrying into effect a judgment of that Court.

Your petitioners therefore humbly pray, that the persons so in custody may be discharged.

(Signed)

CHARLES WETHERELL.  
THE COMMON SERJEANT OF LONDON,  
&c. &c.

The petition was ordered to lie on the table.

On the 9th March a public meeting of attorneys and solicitors was held at the Free-masons' Tavern, which was attended by upwards of 500 members of the profession. Mr. Charles Shadwell in the Chair. The following resolutions were almost unanimously agreed to, *viz.* :—

Moved by Mr. Frere,—seconded by Mr. Teesdale.—That the members of this profession have observed with much alarm the proceed-

ings of the House of Commons in imprisoning an attorney of the Court of Queen's Bench, for having acted as attorney of a party in an action in which it was supposed that a privilege claimed by that Honourable House might be called in question.

Moved by Mr. Adlington,—seconded by Mr. Kinderley.—That it is the undoubted right of all her Majesty's subjects who consider themselves aggrieved by the act of any person whomsoever to seek for redress in her Majesty's Courts. That the law has pointed out the proper remedy for an erroneous judgment of the Courts, and the constitution has vested in the legislature the power of altering the law as may be necessary; but that the constitution does not recognize in any person or body in the state the right to controul the administration of the law in her Majesty's Courts.

Moved by Mr. William Lowe,—seconded by Mr. George Low.—That all suitors in her Majesty's Courts are entitled to the assistance of their attorney to conduct their cases, and that it is essential to the enjoyment of that right that the attorney should be protected in the lawful discharge of his professional duty, and that this meeting, without expressing an opinion on any privilege claimed by the House of Commons, or on the conduct of any of the parties who have incurred the displeasure of the House, is of opinion that the imprisonment of an attorney for acting in his professional capacity in accordance with the decision of the Courts of Law is most dangerous to the rights and independence of this profession and to the due administration of justice.

Moved by Mr. Anderton,—seconded by Mr. Robert B. Follett.—That a petition embodying these resolutions be presented to the House of Commons; that the Incorporated Law Society be requested to allow the petition to lie in the Hall of the Society for signature; and that James William Freshfield, Esq. M. P. be requested to present it to the House.

Moved by Mr. Beaumont,—seconded by Mr. Austen, and carried unanimously.—That the thanks of this meeting be cordially given to Mr. Charles Shadwell, for his conduct in the Chair this day.

[For a report of the discussion at this meeting, see p. 377, ante.]

The following is a copy of the petition :

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of the undersigned, Attorneys and Solicitors of her Majesty's Courts of Law and Equity,

Sheweth,

That your petitioners have seen with alarm the proceedings of your Honourable House with reference to the cause of "Stockdale versus Hansard."

Your petitioners beg leave respectfully to submit to your Honorable House that it is the undoubted right of all her Majesty's subjects, who consider themselves aggrieved by the act of any person whomsoever, to seek for redress in her Majesty's Courts.

That your petitioners submit that all suitors in her Majesty's Courts are entitled to the assistance of their attorney to conduct their cases, and that it is essential to the enjoyment of that right that the attorney should be protected in the lawful discharge of his professional duty.

That the law has pointed out the proper remedy for an erroneous judgment of the Courts, and the constitution has vested in the legislature the power of altering the law, as may be necessary. But your petitioners most respectfully but firmly submit, that the constitution of this country does not recognize in any person or body in the state, not even in your Honourable House, the right to supersede the administration of the law in her Majesty's Courts.

That your petitioners have heard with deep regret, that an attorney has incurred the displeasure of your Honourable House and been committed to prison, because he has acted as attorney of a party in an action in which it was supposed that a privilege claimed by your Honourable House might be called in question.

That your petitioners, without expressing an opinion on any privilege claimed by your Honourable House, or on the conduct of any of the parties who have incurred your displeasure, beg leave respectfully to submit, that the imprisonment of an attorney for acting in his professional capacity, in accordance with the decision of her Majesty's Courts of Law, is most dangerous to the rights and independence of your petitioners' profession, and to the due administration of justice.

Your petitioners most humbly pray your Honourable House, that your Honourable House, while taking such measures for securing the privileges which the constitution has given you for the benefit of the people as in your wisdom you may think right, will not sanction any act which may be injurious to the rights of your petitioners, or interfere with the independence and dignity of the law and the free administration of justice.

And your petitioners will ever pray &c.

The petition having been signed by 757 members of the profession, was presented to the House of Commons on the 17th March, by Mr. Freshfield, who fully stated the purport of the petition, and it was ordered to lie on the table.

Our readers are thus put in possession of the sentiments of both branches of the profession upon this subject.

## ON LEGAL DEBATING SOCIETIES.

*To the Editor of The Legal Observer.*

Sir,

As a firm and tried friend to the interests of the junior branches of the profession, I make no apology for addressing you on a subject, to them, of great importance; namely, the propriety of societies being formed amongst articled clerks for the purpose of legal discussions. I am aware that societies of this kind do exist to some extent in London, and in one or two of the largest provincial towns; but there are a great number of towns of second or third rate size, where there would be found a sufficient number of clerks to support an institution of this kind, with great benefit to themselves, and credit to the profession. A strong reason why they do not exist in these towns frequently is, that party feeling is carried so high amongst the practitioners that their pupils catch the infection, and thus, any plan for mutual improvement is frustrated by the intervention of political or religious prejudice. An equally powerful reason may be that articled clerks are not unfrequently bound by the interested spirit of their masters, (for they too seldom reveal themselves in the character of tutors) to observe the same office hours as their engrossing clerks, which are generally too long extended through the evening to allow of other engagements than nature requires for recreation. It is obvious that there may be, and frequently are, great obstacles in the way of the clerk, who is anxious to be thoroughly acquainted with the practice of a profession which requires for its successful prosecution a greater versatility of talent and acquirements than any other. And there is little or no opportunity given for the development of this talent, and the attainment of these acquirements, more than is afforded in the intervals of office hours, which must be occupied by close reading and patient research.

If greater indulgence in this respect were shown by attorneys to their clerks, it would not abate the alacrity of the clerk in discharging his duties to his superiors, and would give him the chance of embarking in plans with clerks in the same town for mutual improvement. No plans of this kind can be more useful to the clerk than meeting for the discussion of points and questions of law. This would sharpen the powers of his mind, more thoroughly ground him in binding principles, and keep alive his intimacy with practical details. More substantial knowledge might be thus acquired in the course of a single evening than would result from the reading of a week; —besides the great advantage it would confer in training to a habit of clearly and succinctly expressing one's ideas on any subject in practice. The best plan for such a meeting appears to be, that of first reading a paper on some previously fixed topic, and then debating the question which it involved; the person

who opened the argument; or some person as president of the meeting, (some practitioner, especially a junior one, would give his assistance in this capacity, there is little doubt) would sum up the arguments adduced on each side; and if some practising gentleman presided, the real law of the case might be explained and clearly laid down. I am satisfied, from observing the effect of similar societies applied to other professions,—as the medical and clerical,—that they would be highly beneficial in their tendency on the minds of those who are engaged in legal studies. Almost any number of clerks would be sufficient to constitute a society, and no expense comparatively would be required to maintain it. It may be said that some articled clerks take plenty of time already, without advancing themselves much in their profession. But this is no reason why those clerks who are anxious to learn, and have not the time allowed them, should not have great claims on the liberality of their employers. Trusting that these observations will not be misconstrued by gentlemen in practice, but induce them to encourage their clerks, if disposed to adopt the suggestions thrown out, I beg to subscribe myself with great respect.

#### **AN ARTICLED CLERK IN THE COUNTRY.**

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#### **PROPOSED ARTICLED CLERKS' CLUB.**

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*To The Editor of the Legal Observer,*

Sir,

If you think the following project at all feasible, you will oblige me by inserting this letter. I am not aware there is at present any thing of the kind in existence, but that is no reason why there should not be.

I would propose that the articled clerks in London, as also any other gentlemen willing to join the club, should form themselves into a club or society.

That a room should be taken at some first-rate coffee-house, to be kept for the use of members only.

That this room should be open in the winter months, say from six till eleven, and that the members should be supplied with coffee or tea only, at reduced price; and that the newspapers, the law and other magazines &c. should be taken in.

That the members should meet regularly once a week to discuss any question (excepting on religion or politics) which should be proposed at the time of meeting.

Milo.

[It will be observed, from this and the preceding letter, that our young friends, both in town and country, are laudably desirous of improvement.—ED.]

#### **LAW OF ATTORNEYS.**

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##### **OPPOSING ADMISSION.—LAW SOCIETY OF IRELAND.**

ACCORDING to the following case, it appears that the Law Society will be heard in opposing an application by a party for admission as an attorney.

Mr. P. M'Connell, having given the ordinary notice of his application to be admitted as an attorney of the Court, a petition, supported by affidavit, was presented to the Court by Mr. James Newcomen, one of the attorneys, as secretary, and on behalf of, the Law Society; stating, amongst other things, that M'Connell had been originally a schoolmaster and land-surveyor, and afterwards a publican. That in November, 1827, he had been articled to an attorney named Nolan, who was then quite blind, and incapable of attending to business; that during the alledged apprenticeship, Nolan had never resided, or had an office at Tandagree, in the county of Armagh, where M'Connell had constantly lived, and had an office, drawing deeds and giving advice; for which he had received pecuniary compensation. The petition also stated, that he had managed several records, made out briefs, stated cases for counsel, &c.; for all of which services, payment had been made by the clients to M'Connell.

Upon reading the petition the Court ordered that M'Connell should be examined in Court, *rivd voce*, touching its contents. He admitted his having practised in the several ways imputed to him; but only as the apprentice of Nolan, with whom he had accounted for all monies received. He admitted that he had filled up some civil bill process for his own benefit; but denied that he had kept any office in Tandagree, or in any other place.

The whole matter having now come on, Mr. J. D. Jackson, on behalf of the Law Society, opposed his admission.

Mr. G. Bennett and Mr. J. Martley, for M'Connell, objected that the Law Society could not be heard. The late Chief Baron O'Grady had entertained very serious doubts whether he would be justified in receiving an objection, which emanated from an irresponsible body, like this. Though all the charges had been true, and the party had actually practised in the name of an attorney, it would only have subjected him to a penalty. *Matthews v. Royle*, 6 Moo. 70. The application ought to be granted, with costs against the secretary.

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\* This society consists exclusively of attorneys and solicitors; it was instituted in June, 1830, and has for its professed objects the preservation of the rights and privileges of attorneys; and generally the adoption of such measures as may be best calculated to advance the respectability of the profession.

**Joy, C. B.**—The act 13 & 14 Geo. III, c. 23, s. 8, directs the Court to make inquiry into the case of every person practising in the name of another; and to summon such parties as may be consonant of the facts; and that the Court shall have power to punish, as for a contempt. I do not think then, we would act wisely, if we were to resist a fair investigation, solicited by men anxious for the respectability of their profession. Where a person thus acts, without any private motive, in a matter in which the interests of the public are concerned, it would not be the duty of the Court to stifle the enquiry. We shall not presume that the Law Society has been influenced by any improper motives. It is true that the memorial may have occasioned some delay to the party, but on the whole, I think him very much the gainer by what has taken place. His character has been strictly investigated; and he has been cleared from all the imputations cast upon him; none of which, however, affect his moral character. His application is now made with unimpeached reputation, and I therefore think he ought to be admitted.

**Smith, B.**—I can very well conceive that the Law Society, without any impure motives, might in process of time erect itself into a sort of Board of Control; and if it did I trust the Court would know how to deal with it. But that is not the case here. The society saw some grounds for its accusation. Those grounds have, however, been satisfactorily removed by the explanations of the party himself, whose character, as it appears upon inquiry, fully justifies the testimonials given to us. I did not expect so satisfactory an answer as M'Connell has supplied.

**Pennefather, B.**—We think that the motives which have induced this charge are unimpeached, and we are therefore not at liberty to make any order against those who have brought it forward under an impression of its truth. And while I would admit this to be the duty of all persons concerned in the administration of justice, I cannot but agree with my brother Smith that we must at the same time take care that this body shall not erect itself into a position by which it might work injustice. Mr. M'Connell has fully cleared himself. His character has not at all suffered. In fact, any results which have flowed from the investigation have been beneficial to him. Admitted. 1 Hayes & Jones, 206.

## THE STUDENT'S CORNER.

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### LIEN ON CATTLE.

To the Editor of the *Legal Observer*.

Sir,

The point raised by your correspondent C. C. C. was decided last Trinity Term in *Jackson v. Cummins*, 5 M. & W. 342.

It was there held that an agister has not a lien in the absence of an express agreement. The decision proceeded on three grounds.

1st. That an agister does not communicate any additional value to the chattels bailed by him. That this is necessary in order to give a bailee a lien, see *Beevan v. Waters*, Mon. & Mal. 235; *Judson v. Etheridge*, 1 Cr. & Mees. 743; *Sunderson v. Bell*, 2 Cr. & Mees. 304; *Scarfe v. Morgan*, 4 Blees. & Wels. 270. 2d. That the point was already decided in *Chapman v. Allen*, Cro. Jac. 27; and 3d. That from the nature of the agistment, that of milch cows, it must be assumed that the owner reserved to himself the right of re-taking possession at any time for the purpose of milking them. On this point, see also *Judson v. Etheridge*. Although the last reason applies only to a particular kind of agistment, yet the other two (and which I submit must be considered the principal grounds of the judgment) are applicable to agistment generally. This is therefore, an express decision that an agister has no lien at common law.

The correct rule to be deduced from the cases on this subject appears to be this; that a bailee has a lien on goods bailed to him in those cases only where an additional value has been conferred by him on the chattels, either directly by the exercise of personal labour and skill; or indirectly by the intermediate use of some instrument over which he has the control. To this rule those cases form an exception in which the nature of the contract is inconsistent with the existence of a lien.

It is true that it was formerly thought that liens could exist only in the case of implied contracts, and that they were excluded by the stipulation of a specific sum. But this doctrine was overruled in *Chase v. Westmore*, 5 Mau. & Sel. 180; and it was there established that a lien might be upheld, even if there be an express contract, provided there were nothing in the nature of that contract inconsistent with it.

A. C.

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Sir,

In reply to the following question put by your correspondent "C. C. C." in your Number for Feb. 22d, viz. "Can an agister detain the cattle that are bailed to him for the amount of his demand?" I should answer, decidedly not at common law; but he will be authorized in so doing, provided he can found his claim to a lien upon either, 1st. an express agreement (written or verbal) creating such lien; or 2d, an implied agreement to the same effect, such last mentioned agreement to be inferred from either; 1st. the common usage of the trade throughout the kingdom, or in the particular place, and the decisions of the Courts of Law thereon; or 2d, the usage of the parties themselves in their previous dealings with each other.

With respect to an agister's claim to a lien, as founded on an implied agreement to be inferred from the common usage of the trade, I am not aware of the existence of any general or local customs whereon to found such claim; nor of any cases decided in our Law Courts wherein the existence and validity of

such customs have been dispensed or recognized: and the presumption is, that, if attempted to be set up, they would, in all probability, be rejected as unreasonable.

As authorities for my positions, allow me to refer your correspondent to 2 Bl. Com. (19th edition) 451, n. (27); 2 Sel. N. P. (9th ed.) 1403, 1404, 1410; Smith's Commercial Law, (2d ed.) 457—463; in which last mentioned treatise will be found a most comprehensive and luminous epitome of the existing law on the important subject of lien.

D.

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#### WILLS ACT.

Sir,

In the Legal Observer of 28th December last, is a letter signed H. D. D. on the construction of the 33d section of the Wills Act, and stating a case in illustration of the supposed operation thereof; which letter has been since commented upon in Legal Observer of 25th January by another correspondent, G. D. As your periodical is so universally circulated, and consequently so easy of reference, I shall not occupy your time or space by a recapitulation of the heads discussed in those letters, but at once proceed to make a few observations upon the above-mentioned section; with an especial view, however, to the chief point alluded to by those correspondents.

Probability or improbability as to a testator's intentions would in no way influence the construction to be put on the act; and, although I do not presume to question what has been the intention of the legislature, yet I say we must abide by its language, and the meaning of that language. At the same time it must be apparent that the sooner that section is altered or explained the better. The case put by H. D. D. might be harsh and unjust in its consequences, or it might not, according to the circumstances attending it. The issue passed over in favour of a *stranger* might be an irreclaimable profligate, undeserving of any bounty whatever; but, on the other hand, it might be an unoffending innocent child of tender years, who would thus be left perhaps totally unprovided for, but which consideration would not change the effect of the act as it stands; therefore it does appear to me that by the terms of the 33d section, the stranger would take the benefit of the devise contained in the will of the original testator, in exclusion of the issue of the first intended devisee—the latter constituting the stranger his sole or residuary devisee. Of course we must all this time assume that no "contrary intention," as mentioned by the act, appears.

Now let us vary the case a little in further illustration,—the probability of which is less questionable than the other. Suppose, then, G. to devise his estate of *Greenacre* to *W.* who is possessed of two estates, *Whiteacre* and *Blackacre*, and dies in the lifetime of *G.*, having by his will devised *Whiteacre* to his eldest son *B.*, and *Blackacre* to another son, *C.*, with a devise of: "all other his real estate,"

which he was aware consisted of a cottage and garden only, to *H.*, a very distant connexion, and who happened to be the occupant of the said cottage and garden. *G.* afterwards dies without having altered his will by codicil or otherwise. Who then on his decease would be entitled to *Greenacre*? If it can be disputed that it would pass to *H.* by virtue of the words "all other his real estate," I should be glad to know to whom it would go, and the grounds of such opinion. It seems clear that the residuary devise would carry it. But assuming that there had been nothing in *W.*'s will which might be construed into a residuary devise—to whom in that case would it be said to go? It is submitted that *R.*, the eldest son of *W.*, would be entitled to it; likewise in the event of *W.* dying *intestate*.

The object of the legislature has, no doubt, been a desire to secure to the issue of an intended devisee, who should happen to die in the lifetime of his testator,—in exclusion of elder collateral branches,—the bounty intended for such devisee; but it is greatly to be lamented that that charitable intention has been but imperfectly provided for. The section in question should be remodelled; but with a very slight alteration, by the introduction of a few words, it might be very much ameliorated in its operation. It is therefore humbly suggested to insert the words inclosed in brackets, which would, it is conceived, secure the benefits to the issue; at least much more satisfactorily than at present—"such devise or bequest shall not lapse but shall take effect [for the benefit of such issue only] as if the death," &c. &c.

D. C.

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Sir,

Your correspondent (*W.*) seems to be of opinion that the Courts would construe the 33d section so as to give effect to what is conjectured, and no doubt rightly conjectured, to have been the intention of the *framer* of the act, viz.: to prevent the children or issue of the deceased devisee from being deprived of the estate by the circumstance of his having died before the testator; I say "the intention of the *framer* of the act," for I find no preamble or recital from which it can be collected, *judicially*, what was the intention of the *legislature*. I think the Courts could not so construe the act. The question is a very simple one, and it is this: How would the devise have taken effect if the death of the devisee had happened immediately after the death of the testator? And the answer appears to me to be equally easy:—It would have taken effect so as to vest the estate in the devisee, and if he died *intestate*, it would have descended to his heir at law, but if he left a will, containing sufficient words and duly executed, the estate would have passed by it. I cannot see how any other conclusion can be come to upon the words used.

The section ought to have provided that the devise should take effect as if the devisee had died *intestate* immediately after the tes-

tator. This defect can be only supplied by the legislature.

Sir Edward Sugden is of opinion that the estate would pass by the devisee's will. See the last edition of his *Vendors*, p 260.

C. M.

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#### POWER COUPLED WITH INTEREST.

In 1813, testator devises, in substance, as follows, *viz.*, I give and devise all my real and personal estate to *G.* and *M.*, "and to their heirs and assigns for ever, to hold to said *G.* and *M.*, and their heirs, upon trust to permit my three daughters to receive the rents and proceeds of his said estates until the youngest shall attain twenty-one; and when that event shall happen, then I direct my said trustees with consent of such daughters as shall then be living, (but not otherwise) to sell and dispose of my said estates; and the monies arising therefrom, I direct my said trustees to pay and divide amongst my said three daughters; and I direct that the receipts of my said trustees and of the survivor of them, and of the heirs, executors, and administrators of such survivor, shall be good discharges to the purchasers, who shall not be answerable for the misapplication or nonapplication of the purchase monies. And I appoint said *G.* and *M.* executors of my will."

In the same year by a codicil to said will, executed in presence of two witnesses only, testator says, "I revoke the appointment of said *M.*, as trustee and executor of my said will, and in his place appoint *H.* trustee and executor of my said will, and I direct this codicil to be taken as part of my will, hereby confirming my will in all other respects."

In 1816, by a second codicil to said will, said testator after reciting said will and codicil to the above effect, proceeds as follows: "Now I revoke that part of my said will which directs my said daughters to receive the rents until the youngest shall attain twenty-one, and then, with consent of such of them as shall be of age, to be sold as therein mentioned. And I hereby direct the said *G.* and *H.*, (the trustee substituted by the codicil for *M.*,) at any time after my decease, and with the consent of my daughter *S. G.*, to sell and dispose of all my said real and personal estate, and the monies arising therefrom, I direct my said trustees or the survivor of them, his executors and administrators, in the first place, to pay off debts charged on my estates, and to place out the remainder on good securities; the interest thereof I direct shall be paid to my daughters until they shall respectively attain twenty-one, and to pay the part or share to every daughter attaining twenty-one. And I direct this codicil to be taken as part of my will, hereby ratifying and confirming my said will and first codicil in all other respects."

*H.*, the substituted trustee, died shortly after the testator, and *G.*, the surviving trustee, with consent of testator's daughter *S. G.*, sold the real estate.

First.—Is it not clear that the devise to the trustees conferred on them the legal fee, and that, although the direction to sell did not run in the usual form, *viz.* (that they or the survivor of them &c. should sell), the power to sell would go to the survivor?

Secondly.—As the said first codicil was executed in the presence of two witnesses only, was it not inoperative as a revocation of the appointment of *M.* as trustee?

Thirdly.—If the codicil had been properly executed, would it have been an effectual substitution of *H.* in the place of *G.*, considering that such substitution was not accompanied with an express devise to *H.*?

Fourthly.—If the second codicil was inoperative for want of being properly executed, was it not set up by the words of confirmation in the third codicil?

Fifthly.—Is it clear that the conveyance by the trustee *G.* and testator's said eldest daughter, was sufficient?

On referring to Sugden on Powers,<sup>a</sup> I collect, that where a naked power is given to several persons, it will not survive, but that where it is coupled with an interest, as in the case of a devise to several and their heirs, upon trust to sell, such power may be exercised by the survivor, although not expressly so provided. If this be the case, it would seem that the words "survivors and survivor," usually inserted in trusts of this kind, are superfluous.

F.

#### POWER OF APPOINTMENT IN PURCHASE DEEDS.

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*To the Editor of the Legal Observer.*

Sir,

YOUR correspondent, page 259, *ante*, under the signature of "a Country Conveyancer," evidently writes under great misconception as to the reasons for the practice of preparing purchase deeds of fee-simple lands by power of appointment and limitation of uses, where this mode is adopted; as well as in ignorance of the Rule adopted in the investigation of titles, with reference to calling for an abstract of any deed which happens to be referred to upon the abstract, and which, when produced, if found to refer back to an antecedent deed in a similar manner, involves, as he supposes, the necessity of the production of such prior deed also, "and so backwards, *ad infinitum.*" I apprehend, with submission, that a deed of appointment and release 60 years old would be regarded as a good root of title; because, admitting the power recited in it not to have been well exercised, to ascertain which the production of the earlier deed would be required,—the instrument would operate as a

<sup>a</sup> See p. 106 to 111, and 168, 4th edition, Sugden on Powers, and p. 596, Barten's Elements, v. 5, 590 to 599.

release, and the title be unobjectionable. Indeed, it is by no means so clear as your correspondent seems to imagine, that a purchaser can require the production of deeds referred to or recited in deeds of 60 years old, unless such reference or recital disclose some suspicious circumstance.

Again : as to the practice of conveyancing by the exercise of the power of appointment in purchase deeds, as well as by the release, I think your correspondent is mistaken as to the extent of it; for it may, perhaps, be safely asserted, that until a case to which I shall have occasion hereafter to allude, was decided, the mode of conveyance both by *appointment and release*, was not adopted at all so generally as he conceives.

The true reason why "this power of appointment thus introduced" and "adopted of late years," as your correspondent complains, was so introduced, appears to have been the security which, according to the case of *Doe d. Wigan v. Jones*, 10 Barnewall & Cress. 459, was afforded to purchasers ; and, in the case put by him, judgments entered up between the year 1800 and the period when *L. M.* might sell, and exercise his power, would be effectually over-reached by the appointment ; and this too, as appears from the case of *Eaton v. Sanster*, 6 Sim. 517, whether the appointee had or had not notice. I agree with your correspondent in what he has remarked as to the object of preventing the dower of the wife of the purchaser from attaching, being effected *more certainly* by the severance of the freehold from the inheritance, by means of the usual limitations introduced subsequent to the exercise of the power, than by resort to the latter only ; I would observe, that as to all purchasers married since the 2d of January 1834, the necessity of any introduction of a limitation of the estate for life of the trustee, among those usually inserted to the purchaser himself, is dispensed with ; as a simple declaration by the latter that *no wife of his shall become dowerable is sufficient to bar her of dower*.

It remains only to say a word or two upon the concluding paragraph in the letter of your correspondent, in which he cautions his readers against inferring that he has offered any decided opinion as to the length of time that is sufficient to constitute a marketable title. Considerable weight is justly due to the opinions of both the learned and distinguished gentlemen whose statements on this point are alluded to. He is not perhaps aware, however, that a conveyancer—whose extent of practice, as well as high standing in the profession, entitle us to consider anything he states on this very important point as an authority equal to that of either of them—has expressed a very different opinion, which is published in Hayes' *Introduction to Conveyancing*, p. 239 [3d edit.] I may also add it is still usual to require a 60 years' title in the Master's Office, and by this practice that of the profession must be regulated until we have a judicial opinion to the contrary.

T. H.

## SELECTIONS FROM CORRESPONDENCE.

### NON-PAYMENT OF COUNTRY AGENTS.

*To the Editor of the Legal Observer.*

Sir,

I have had my attention particularly directed to the subject of "Non-payment of London Attorneys to Country Agents." It would seem to be taken for granted by your correspondents, that the payment by the profession in town is of rare occurrence. There may be, as your correspondent observes, some black sheep of the profession that omit to do their duty in this particular, but I hope and believe they are comparatively few in number. What is the practice ? An attorney in London forwards a writ into the country for service. If the agent is a stranger, he invariably looks into the Law List, and the character of the agent in town regulates him in his choice. The writ is served in a great number of cases—the amount of debt and costs is immediately paid—and the country agent forwards the amount thereof to the London attorney, less his own charges. Where the debt and costs are not discharged as above mentioned, it is almost the invariable practice for the country solicitor to forward to his town agent the affidavit of service, &c. which, of course, are never delivered up by the latter, without first payment of the charges. I have thought it right to trouble you with these hasty remarks, that the question may stand in its proper light. I would, in conclusion, suggest to the gentlemen in the country, (what has often been advised by the Masters on taxation of costs) to make out their charges more moderately, and to be content with the sum allowed to the attorneys in London without persecuting the latter for the sums deducted by the officer of the Court.

A LONDON ATTORNEY.

### QUEEN'S BENCH JUDGMENT OFFICE.

Sir,

Being an old subscriber to your publication, and having always observed your readiness to expose any neglect or abuse, I take the liberty of calling your attention to the unjustifiable and injurious delay which takes place at the office where the judgments are signed in the Court of Queen's Bench. I myself attended there lately, having to sign a judgment, and will you believe it, although I was only about the ninth person in rotation, I had to wait one hour and a quarter to get my judgment signed ! Now as the offices close at three o'clock in the vacation, and the masters also leave at that hour, it is important that parties should not be unnecessarily detained at the public offices during the time (which is so valuable to attorneys and the clerks to

transact their business in) that they are open. There was always great delay in transacting the business at this office, and which was a source of great complaint in the profession years ago; but surely as the parties are now paid by government, and their time of attendance much shortened, they ought to attend to their duties with all dispatch during their hours of business.

AN ATTORNEY.

[More clerks should be employed, if requisite. ED.]

#### INNS OF COURT.

Sir,

Could you inform me of the rules and regulations necessary to be observed by persons entering at the Inner Temple, and whether an articled clerk (his articles being cancelled) would be eligible to enter, and would his terms commence at the day of entering, or the expiration of his articles, if the same had not been cancelled?

T. S. G.

[We understand that no one can be admitted as a member of an inn of court whilst under articles. If they are cancelled, he is of course eligible. ED.]

#### TAXING COSTS ON HOLIDAYS.

Sir,

In reference to the letter of "An Attorney" contained in a late number of your work—although I cannot deny the existence of the inconvenience of which it complains, I think there are several ways in which any injury to the client might be obviated by the exertions of his attorney. In the first place, I believe it is the constant practice of the clerk of the judgments, in the absence of the Masters, to tax costs to which there is little or no opposition, and, in the second place, in default of the first being practicable, I think it would be the duty of an attorney, under the circumstances detailed in that letter, to forego the costs incident to the judgment, and issue execution for the amount of debt and subsequent expences only. I believe this to be a course pursued by many of the profession on similar emergencies, and removing in a great measure the injury of which your correspondent complains.

There is, no doubt, a considerable hardship in this sacrifice; but, as the proverb says of two evils choose the lesser one, it were far better to submit to the trifling rather than the greater loss.

W. F. F.

#### SERVICE OF CLERKSHIP.

Sir,

I WAS articled in January 1839, for five years, to B., who has two offices, one in the town of C., and the other in the town of D. B. lives at the former place, which is distant from the latter six miles. I have served two years at the office at C. and intend to serve the remainder at the office at D. Am I obliged to serve

the remaining three years of my clerkship at the same place in which the gentleman to whom I am articled resides? or can I to the satisfaction of the examiners when I apply for admission, serve the remaining three years at the office at D. I should feel greatly obliged if you or some of your numerous correspondents would be kind enough to advise on the above.

AN ARTICLED CLERK

[We think the validity of the service will depend on the attorney's attendance at the latter place. The residence will not be material. ED.]

#### RESTRAINT ON ALIENATION.

Mr. Editor,

After reading your report of the case of *Scarborough v. Borman*, the question has occurred to me:—What right has the *Lord Chancellor* to assume to himself the powers of the legislature?—for to subject any species of property to rules, which may affect the common-law rights of any parties, without their express or implied assent, appears to require the authority of parliament.

It may be well perhaps to admit that, by an agreement in contemplation of a marriage, the husband shall bind himself to allow to his wife the separate use of certain property; and in order farther to secure to her that benefit, (if benefit it be) it may be proper to restrain her power of alienation; but why that which may be considered the absolute property of a *feme sole* should, upon her marriage, and independently of any contract, become subject to such regulations, I cannot comprehend.

As a *feme sole* she may make what terms she pleases, previously to marriage, or, if she be under age, the guardian or the Court may do so for her; but if no such terms be made, I would submit that the law should take its course, "*Volenti non fit injuria*."

The settler cannot complain of a disappointment, which every one must expect who attempts to contravene any rule of law.

M. W.

#### THE LATE SPECIAL COMMISSION.

Sir,

If your correspondent W. J. (page 313) will refer to the proceedings in the House of Lords shortly after the decision of the fifteen Judges, he will find that the Marquis of Normanby stated to the House that the petition of one of the prisoners, setting forth the same arguments as are adduced by your correspondent, and upon those grounds praying for a free pardon, had been referred to the Judges who tried the prisoners, and that Chief Justice Tindal had reported, that the Judges upon the trial entertaining doubts upon the objections raised, had decided the questions against the prisoners, and left them to appeal from such decision, and which had been done, and the majority of

the Judges constituting the Court of Appeal had held both the objection taken by the prisoner, and that on behalf of the Crown, to be good. Had the Judges taken time to consider of their judgment, or to consult the other Judges, the matter would not, I apprehend, have been argued in the Exchequer Chamber, but decided upon the arguments adduced at the trial, and the *private* advice and assistance of such of the Judges as those named in the Commission might choose to consult; whereas, in the present case, the objections were certified by Chief Justice Tindal for the opinion of the fifteen Judges, and counsel were heard in support and opposition to such objections.

The objection being of a mere technical character was, I conceive, very properly defeated by a similar one—the prisoners asked for a strict interpretation of the law, which they were entitled to, and they had it,—there was therefore no ground for acquitting any of the prisoners, the juries having found them guilty of the crimes charged against them.

H. B.

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#### THE NEW WRITS.

Mr. Editor,

Will you be so good to inform your readers, if the note at the end of the first form of the new writs of execution, p. 375 of your Saturday's journal—

"Note.—This and all other writs of execution may be made returnable on a day certain in term"—

is a part of the new rules? If so, I presume if it be desirable to make a *ca. sa.* returnable on a day certain in term time, the words "immediately after the execution hereof," should be omitted, and the words "on      day the      day of      , in the year of our Lord one thousand eight hundred and forty," should be inserted.

You will excuse my being thus particular in putting the question, because in these quibbling times, when the omission of the words "*Anno Domini*," although in this Christian era, are held to upset a whole legal proceeding, it is essentially necessary that forms prescribed by the Court should by their accuracy and certainty be placed beyond the reach of such ingenuities. Civis.

[The note was extracted from a printed copy of the forms published "by authority."]

ED.]

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#### PRACTICE OF RETAINERS.

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Mr. Editor,

In popular words, the effect of a retainer accepted is, in my estimation, this, that it entitles the client retaining to a right of exercising his option of employing or rejecting the services of the counsel retained upon any occasion first happening next after the said acceptance of retainer, whereon "the discretion of counsel" is

required, or may be required, to further the views of the client in the case or cause under consideration; and that therefore the employment of any other counsel upon such an occasion, without application being made also to the counsel retained is an *overt act* of the option having been exercised in the negative; but any occasion requiring only the formal aid of counsel, as a mere matter of course, whereon no special argument is possible, nor allowed, has no operation whatever on the rights of retainer, for no *professional discretion* is in such a case required.

The fact of a fee having been given higher than the *usual one* to an otherwise unretained counsel, even on a mere motion of course, I should consider, (until *no intention to give an unusual fee was proved*, for I could not impute "ignorance" as the source) as an overt act of a belief being entertained that some *special aid* from counsel was necessary; and of an *intention to secure such by an extra fee*, and that therefore the option had been exercised conscientiously, and by the rules of equity in the *negative* in regard to the retained counsel, if his services had in that instance been unapplied for.

In regard to the case mentioned by you in your last number, you will scarcely find, I think, a member of the bar who will deny that "an appearance for a plaintiff on a defendant's notice of motion to dismiss the bill is materially different from a mere motion of course," "as it must depend on the circumstances of the particular case, whether the motion to dismiss ought to be granted, or if refused, upon what terms;" and does not depend wholly and incontrovertibly upon a mere "fixed formality" being put into play by a mere *punctual application*.

G. F., JUN.

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#### SUPERIOR COURTS.

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##### LORD CHANCELLOR'S COURT.

###### SPECIFIC PERFORMANCE.—JOINT STOCK COMPANIES.—PLEADING.—DEMURRER.

Three persons, trustees for a public company, contracted in their own names for the purchase of property, chiefly consisting of mines, part of the purchase money paid down, part to be paid by instalments with interest, the property to be a security for the payment, and the contractors discharged from personal liability. They were let into possession, and their company worked the mines, taking away minerals to a large amount, whereby the property was diminished in value, and became an inadequate security for the unpaid purchase money, which the trustees and directors of the company postponed, having obtained an injunction against the vendor's taking any proceedings at law for the purchase money or the interest. The vendor, in a bill filed for specific performance against the individual contractors, and the trustees and

directors of the company, all who were plaintiffs in the suit against him to set aside the contract, and the representatives of some of them that died, charged them as being personally liable, on the ground of conduct and bad faith; and the whole company and the several members thereof as liable to the extent of the company's property for the residue of the purchase money and of the stipulated interest, and for the costs and losses caused by their conduct, with interest.

Held, upon demurrers to the bill for want of equity and want of parties, that the plaintiff had a clear equity for specific performance, not only against the parties to the contract, but also against the whole company; that it was not necessary to make all the shareholders defendants, but that the directors and representatives of the company, at the time of filing the bill, should all be made parties. The demurrer for want of equity, therefore, was overruled, but that for want of parties was allowed, with leave to amend the bill, and without costs.

This was an appeal from orders of the Vice Chancellor upon certain demurrers to the plaintiff's bill. The case before his Honour, together with his judgment, is reported in Vol. 18, Leg. Obs. p. 8, where also reports contained in former volumes of all the important decisions in the suit in the Court of Exchequer by the present defendants against the present plaintiff, are referred to. From these reports, and from the following judgment of the Lord Chancellor, may be collected the history of this protracted litigation, too long to be recapitulated here.

The appeal was argued for several days in July and August last, by Mr. Serjeant Wilde, Mr. Wakefield, and Mr. Lovat, for Mr. Attwood, the plaintiff and appellant; and by Mr. Knight Bruce, Mr. Jacob, Mr. Wigram, and Mr. Sharpe, for the demurring defendants.

Among the cases cited in the argument were *Adair v. The New River Company*,<sup>a</sup> *Meux v. Maltby*,<sup>b</sup> *Hichins v. Congreve*,<sup>c</sup> *Long v. Yonge*,<sup>d</sup> and cases there referred to; and *Vernon v. Blakersley*,<sup>e</sup> in the question as to parties; and *Pulteney v. Warren*,<sup>f</sup> *Hanson v. Gardiner*,<sup>g</sup> *Bond v. Hopkins*,<sup>h</sup> and *Garth v. Cottan*.<sup>i</sup>

The Lord Chancellor, after taking time to consider the case, now delivered the following judgment.—This was an appeal from orders of the Vice Chancellor, upon demurrers for want of equity and for want of parties. The Vice Chancellor was of opinion that as to certain parties who were defendants to the bill, the demurser was good for want of equity; he was of opinion that the former directors of the company, who were the plaintiffs in the

suit against Attwood, were not proper parties, and it follows as a matter of course, being of that opinion, that the representatives of some of those parties are also improperly brought before the Court. That being the Vice Chancellor's opinion, it was not at all necessary for him to consider whether certain other persons ought to have been parties, which could only arise in the event of his thinking that those persons who were the subject of the general demurser, were the proper parties. He was of opinion that the bill was good, but good only as an ordinary bill for specific performance, and therefore to be enforced only against those persons who were parties to the contract, Small, Shears, and Taylor. Now, looking very carefully through the bill, of course I must take the case as it is stated upon the bill, the result of that decision appears to me to be that the plaintiff would have no remedy at all, because it is part of the arrangement which the Vice Chancellor observed upon, part of the contract, that those persons shall not be personally liable. In the way in which the Vice Chancellor has left the records, there are no persons before the Court, but those three persons, and they are there only as being parties to the contract. But if the contract is to be performed in the way in which it was arranged between the parties, and if no equity has arisen from the subsequent transactions, to give a better remedy to the plaintiff, why then (being the owner of the whole, and the estate being in the possession of the purchasers, and they not having paid the purchase money) the Vice Chancellor's judgment appears to me to have left the plaintiff in this situation—that he is only to prosecute his suit for the purchase-money against the three persons, who are not personally liable for it. It is obvious, in that view of the case, that the plaintiff would have no remedy at all, provided the contract is to be performed on the terms in which it appears on the face of the bill to be stated, and that nothing has happened since to give the plaintiff any new equity. Therefore his only remedy is upon the written contract. Now when we look upon the case as stated upon the bill, that the plaintiff was owner of property of very great magnitude, consisting principally of mines, (this is the case stated); that he entered into a contract with certain persons on behalf of the company; that the contract was in their own names; that the effect of that contract was to give those persons, namely, the defendants in the suit, the property of which the plaintiff was so possessed; that he was to be paid by certain instalments, (I am taking now the whole contract together, as it ultimately appeared between the parties); that they were not to be personally liable; that the instalments were to be paid at certain stipulated periods; and the plaintiff was to look to the security of the estate as a means of obtaining payment. The bill then states that in fraud of that contract, and for the purpose of defeating the plaintiff's right, and of appropriating the property to themselves, without paying the consideration

<sup>a</sup> 11 Ves. 429.

<sup>b</sup> 2 Swanst. 227.

<sup>c</sup> 4 Russ. 562.

<sup>d</sup> 2 Sim. 369.

<sup>e</sup> 2 Atk. 144.

<sup>f</sup> 7 Ves. 93.

<sup>g</sup> 7 Ves. 308.

<sup>h</sup> 1 Scho. & L. 413.

<sup>i</sup> 1 Dick. 183.

money, they instituted a suit, containing a variety of false charges, which at one time were supposed to be well-founded, but which, by the ultimate decision of the House of Lords, have been declared to be ill-founded, and that by those means, and by undertakings in the cause when it was pending in the Court of Exchequer, they have protracted the day of payment, (I think that the last payment was to be in 1827, many years ago) and that the result has been that, during the whole of this period, while they were preventing the plaintiff from receiving that which was his due, namely, the consideration for the property of which the defendants were in possession, they were continuing to work the mines and exhaust the property to which the plaintiff, according to his statement, was to look for the purpose of working out his security; and that the result of that has been that 300,000*l.*, or some such sum remains due, the property itself, according to the statement in the bill, having, by the working of the company in the meantime, become an inadequate security for that sum—for that is the statement.

Now, for this Court to say upon such facts that there is no remedy for the plaintiff; that he cannot go against the property, because he is only to sue upon the contract, and there being, according to the *Vice Chancellor's* decision, only three persons representing the contract, and who are there only as being parties to the contract, would be a state of things very much to be lamented, if it were so; but my opinion is, certainly, that upon this statement in the bill, there is a remedy for the plaintiff. Whether the facts are made out or not, of course is not now to be considered; but if he makes out his case as stated on the face of his bill, this Court will find the means, so far at least as the circumstances enable the Court to do so, to restore the plaintiff, as far as possible, to the situation in which he ought to have stood, looking at the contract now established between the parties, as a valid contract, as that which is to regulate the rights of the parties. In the first place, I take it to be quite clear that, according to the contract itself, he has a right to look at his remedy against the property as it remains. There is another part of the case which I don't allude to, because, if the other parties ought to have been parties to the suit—I mean in respect of the other property which the company are said to have possessed, and which is not part of the property comprised in the contract—it is quite sufficient for the present purpose if the case shows a right in the plaintiff to pursue his remedy against the property itself. Now, with regard to those persons who were directors at the time the contract was entered into, and who were persons filing the bill against him in the Court of Exchequer, and who therefore have been the actors in these transactions, which, according to the statement in the bill originated for the purpose of depriving the plaintiff of his remedy for the payment of the consideration money, which he had contracted for; if the case be as is stated,

there is abundance of authority to shew that persons who have interposed between the party and his rights shall in some way or other (to what extent it is not necessary for me to consider), be liable to make compensation for the injury of which they have been the authors. I think there is quite enough stated in the bill to shew that those, who took upon themselves in the other suit to interfere with the plaintiff's right under his contract, cannot be permitted now to state that they are not parties to the transaction, and that they ought not now to be made parties to a bill in which the plaintiff asks compensation for the unquestionable injury which he has sustained. Being of that opinion, of course it follows that the general demurrer cannot be maintained, the demurrer for want of equity. It applies as well to those who were directors and plaintiffs to the original suit, as to those who are now demurring parties, being representatives of persons who were in that situation, but who are now dead. It therefore becomes necessary that I should consider how far the objections are good respecting the want of parties.

Now it is said that assuming the suit to be properly constituted in other respects, there are three descriptions of persons who are not brought before the Court. The one set of persons are all the shareholders of the company; the second are those who were directors of the company at the time the bill was filed; and thirdly, it is stated that one of the old directors, Mr. Morrice, being dead, that his representatives are not brought before the Court, and that there is not sufficient stated upon the bill to explain the reason why they are not brought before the Court. Now with regard to the first, what is stated in the bill, looking at the authorities upon this question, there is no ground upon which the objection can be maintained. The bill alleges that there are 600 shareholders, and that they are constantly varying, the shares being transferrable, and states a case, therefore, that makes it utterly impossible that the plaintiff could pursue his remedy, if he must pursue it by bringing before the Court, and keeping before the Court, all persons who are shareholders. The cases of *Adair v. The New River Company*,<sup>a</sup> and *Meux v. Maliby*,<sup>b</sup> in which that was considered, have saved me the necessity of doing that which I certainly should have done, if I had not found authorities already standing in the books, of adopting the rule which it was necessary to adopt in order to prevent the grossest injustice being practised by companies of this description. To say that they are to be permitted to sue on behalf of themselves and others, because they are so numerous that they cannot be brought before the Court; and then to say that persons by whom they are sued are not to be at liberty to bring those who are plaintiffs against them before the Court without bringing all the shareholders, would enable them to commit any injustice which they pleased, without the possibility of being

<sup>a</sup> 11 Ves. 429.

<sup>b</sup> 2 Swanst. 277.

made responsible for it. The authorities to which I have referred, and several others, are quite sufficient to shew that this Court has adopted a course which prevents that injustice from taking place. Upon the authority, therefore, of these cases, I am of opinion that it is not necessary to bring the shareholders before the Court as such.

But then there is another part of the case to which I cannot see how this record is to proceed in the absence of certain persons, looking at the relief which the plaintiff asks. The plaintiff asks relief against the company, and against that which is the property of the company. The plaintiff now avers that, the contracts being contracts to be carried into execution, he wants that remedy which the contracts and the subsequent transactions which have taken place, give him in order to obtain the consideration money—the obvious mode of doing that, independent of the personal liability which the parties may have incurred by the course they have pursued, is against the property itself and also against what may have been received during that interval when the rights of the present plaintiff were suspended by the proceedings in the Court of Exchequer. Now if the Court should be of opinion that that exists, then the question is, in what way is that right to be enforced, and what is the remedy to be given to a plaintiff entitled to such right? It must be against the company and those who properly represent that company. But I have nobody here representing the company. I have only those who may be said to have represented the company at a period long past, namely, when the original bill was filed in the Court of Exchequer, but who, upon the face of the bill, are stated to have ceased to hold that situation, and to have handed over the possession of the property which as directors they then held, to other persons who have subsequently become directors of the company. The partnership deed, as stated in the bill, puts the directors in the place of the company, and makes the defendants for the purpose of any litigation between themselves and others, in my opinion, proprietors of the company. I have impliedly said, that when I said the six hundred shareholders are not necessary parties to the suit, but if they are not necessary parties to the suit as shareholders, there must be some persons whom those in contest with the company are at liberty to sue. The only other persons held out by the deed as owners of the property of the company, and competent to deal with individuals who may have transactions with them, are the directors. Now if the directors, who held the property at the time this litigation commenced, were to be made parties to the suit, they must be considered for the purpose of the contest with any other individuals, as the owners of the property, and the persons with whom this contract was made; but they are not made parties to the suit, and then no persons are made parties to the suit, who can be considered in any sense as representing the company, or as against whom a remedy can be enforced, except

the trustees: they are here, but then there are no *cestuis que trusts* here—except so far as they are trustees for themselves. I don't find, therefore, on this record, any persons defendants who represent the interests of the company, or as against whom any remedy the plaintiff may have against the company can be enforced. My opinion is, therefore, that the suit cannot upon this bill proceed, and the plaintiff cannot get what he represents himself to be entitled to, and which he asks, and which, according to the case he makes, no doubt he is entitled to, (if he makes out the case), to a remedy for the consideration money unpaid against so much of the property which remains now available for that purpose. I find no person representing the interest, and no person against whom such a right can be enforced. I think, therefore, that the actual proprietors of the company are necessary parties to the suit, and that of course makes it unnecessary,—as there must be an amendment,—to consider whether there may not be more allegations introduced as regards Mr. Morrice than appear upon the bill at present. The result is, that I overrule the demurrer for want of equity, and allow the demurrer for want of parties, with liberty to the plaintiff to amend his bill.

*Attwood v. Small and others*, Sittings at Lincoln's Inn, July 17, 19, 20, and 31, and August 3, 1839; and February 1, 1840.

#### Queen's Bench. [Before the Four Judges.]

**OUTLAWRY.**

*A plaintiff brought an action while he was an outlaw; he recovered damages in the action. A motion was made and a rule granted to stay the levying of the damages, on the ground of the outlawry. The outlawry was afterwards shown to have been set aside before the trial. The rule was discharged, but without costs.*

Mr. Crouder moved for a rule to shew cause why the proceedings in this case should not be stayed, and the levy of the damages for the plaintiff be prevented, upon the ground that the plaintiff was an outlaw at the time of the action brought.

The Court at first declined to grant the application, and directed the matter to be mentioned again, and asked for authorities: Mr. Justice Littledale intimating that according to Comyn's Digest, the damages, under the circumstances stated, would go to the Crown, so that the Court could have no authority to interfere.

Mr. Crouder afterwards renewed the application.—There are many authorities to shew that this Court will interfere in a case where its process has been abused. Its process is abused when it is put in motion by an outlawed person, for such a person has no civil rights which he can enforce while the outlawry continues unreversed. The passage in Comyn's Digest, which at first appears opposed to the right of the Court to interfere, does not upon fuller examination bear such a construction. The

words of that passage are, "If a man recovers damages in a personal action, and afterwards is outlawed, the King shall have execution." The authority referred to in support of the doctrine is Rolle's Abridgment, and there the words are "*s'il recouvera.*" It therefore appears that the meaning of the passage is, if the man shall have recovered the damages into his own hands, when of course they would be forfeited to the Crown. In *Co. Litt.*<sup>a</sup> it is said "If the ground or cause of the action be forfeited by the outlawry, then may the outlawry be pleaded in bar of the action, as in an action for debt, detinue, &c. But in real actions or personal, where damages are uncertain (as in trespass, and the like) and are not forfeited by the outlawry, there outlawry must be pleaded in disability of the person." That is the case here; this is an action of libel where the damages are uncertain, and are therefore not forfeited. In *Counyn's Digest*<sup>b</sup> also it is said that "outlawry is only pleadable in abatement where the damages are not certain, and therefore not forfeited." The supposed objection to this application is consequently removed. The Court has the power to interfere on the part of the defendant, and the only question now is how that interference shall take place. The present is the only mode in which relief could be afforded to the defendant. The outlawry could not be pleaded in abatement, for a plea in abatement must give a better writ, and an outlaw can have no writ. In *Aldridge v. Buller*,<sup>c</sup> the Court of Exchequer distinctly declared that it had been long settled that an outlaw could not appear in Court but for the purpose of getting his outlawry reversed. Here he is appearing in Court, and making use of its process for his own purposes, while the outlawry is still in force against him.

#### Rule granted.

The Attorney General and Mr. Platt, on a subsequent day shewed cause, and produced affidavits shewing that the outlawry had been set aside some time since, and alleging that the defendant knew of that fact before trial, though not before pleading; and they prayed that the plaintiff might now be allowed to proceed in recovering his damages, and that this rule might be discharged with costs, on account of the delay in bringing the matter before the Court in the first instance.

Mr. Crowder, in support of the rule, denied the knowledge of the reversal of the outlawry. The time at which the motion was made does not affect the case. From the moment that the outlawry was proclaimed till the moment that it was reversed the process of the Court was in law unavailable to the party outlawed. His conduct in bringing the action therefore was an abuse of the process of the Court.

*Per Curiam.*—The rule must be discharged, but as the motion was justified, it must be discharged without costs. *Somers, M. P. v. Holt*, H. T. 1840. Q. B. F. J.

#### PROHIBITION.

This Court will not presume that the Ecclesiastical Court will come to a wrong decision on a matter over which it has jurisdiction. Though, therefore, a declaration in prohibition shewed that the Ecclesiastical Court had not in the first instance admitted a plea in a suit for the enforcement of a church rate, that such rate was retrospective, to be a conclusive answer to the suit, but had directed further proceedings, this Court on demurrer to the declaration, gave judgment for the defendant.

**Prohibition.** The declaration set forth that the defendants in prohibition, had taken certain proceedings in the Ecclesiastical Court to enforce from the plaintiff in prohibition payment of a church rate; that the said plaintiff had then put in a defensive allegation, to the effect that the said rate was bad, being, in part, made for payment of previous debts, and therefore, being retrospective; to that defensive allegation the said defendants had answered, that in April 1833, there was a meeting of the parishioners to consider of making a church rate, but that the meeting was adjourned without any rate being made; that certain repairs to the church were absolutely necessary, and that the defendants in prohibition had been obliged thereby to incur certain expences; that they afterwards assembled the inhabitants of the parish in vestry to make such rate, and that the inhabitants, with full knowledge of all the circumstances, resolved to pay the debts thus incurred, and granted the rate which the plaintiff had refused to pay, and which the defendants, by the suit in the Ecclesiastical Court sought to enforce, as they lawfully might. The declaration then alleged that the question before the Ecclesiastical Court, as raised upon the pleadings there, was, as to the validity of the rate, and that on the facts stated that Court ought to have declared the rate invalid; but the Ecclesiastical Court had ordered the suit to proceed, and the plaintiff therefore prayed a prohibition. The defendant demurred to the declaration for alleged insufficiency, on the ground stated for the granting of the writ of prohibition.

Mr. Rogers, in support of the demurrer. The rate here is legal on the face of it, so that even if it came before this Court on appeal, it would not be quashed. In *The King v. The Mayor of Gloucester*,<sup>a</sup> this Court acted on that rule. There, a private act enabled the overseers to make a rate for the relief of the poor, and to include in it such just and reasonable sums as they should be put to in execution of their offices; they made a rate, the title of which expressed it to be for both these purposes. Upon an appeal to the sessions, a case was sent up for the opinion of this Court, and in that case the sessions stated that the rate was made partly to pay a debt incurred by the late overseers. Though that statement was so made, this Court would not quash the rate,

<sup>a</sup> 128 b.

<sup>b</sup> Tit. Abatement, c. 2.

<sup>c</sup> 2 Mee. & W. 412; Murph. & Hurl. 94.

<sup>a</sup> 5 Term Rep. 346.

because it appeared on the face of it to be legal. In *Tawney's case*,<sup>b</sup> Lord Holt clearly recognised the principle, that where overseers necessarily expend money in the discharge of their duty, and the parish afterwards make a rate to reimburse them, it will be good, and may be enforced by mandamus. The general liability of the parish to pay for the expense of the church, is distinctly recognised in *Lanchester v. Frewer*,<sup>c</sup> but whether this rate is good or not, is not now the question. The Ecclesiastical Court has cognizance of the matter, and this Court will not presume that a court having lawful cognizance of a matter will wrongly decide upon it. *Ex parte Farmer*.<sup>d</sup> Upon these grounds, the demurrer to the declaration must be allowed.

Mr. Wightman, contra.—This rate is clearly illegal; *Rex v. Churchwardens of Dursley*,<sup>d</sup> and yet the Ecclesiastical Court is proceeding to enforce it. The plaintiff is therefore bound, if he means to seek relief at all, to come in this state of things, and not to wait for the judgment. If he waits for the judgment, the answer will be that a competent jurisdiction has decided the matter. It is admitted, as a general proposition, that where the matter before the Ecclesiastical Court is of a kind over which that Court has jurisdiction, and that Court does not proceed in derogation of the Common Law, the Common Law Courts will not interfere. But here the Ecclesiastical Court, by admitting the suit to proceed after the nature of the question was fully brought to its notice, has in effect decided in derogation of the Common Law, and a prohibition must issue. This is a stronger case than that of *ex parte Farmer*, for there the Court to which it was proposed to issue the prohibition had done nothing whatever to shew in what way its decision would be made. In Comyn's Digest,<sup>f</sup> it is said, "Prohibition lies, if the suit in the Spiritual Court is for a thing not according to law." Here it is so—a retrospective rate is not according to law, and the rule laid down in Comyns, afterwards extended to cases where the Ecclesiastical Court determine things in a way not permitted by the Common Law. *The King v. The Mayor of Gloucester*, is not in point, for that depended on the words of a private act of parliament. The authority of the Ecclesiastical Courts in these matters depends entirely on a few words in the statute, *Circumspecte Agatis*, 13 Ed. s. 4; and the Common Law Courts will not unnecessarily extend that jurisdiction, but will restrain it within legal bounds. *Byerley v. Windus*,<sup>g</sup> established that this Court was not bound to wait till the suit in the Spiritual Court was at issue, if that Court was in progress towards the trial of a question over which it had no jurisdiction. That is exactly the case here. *The King v. Sillefant*,<sup>h</sup> will be relied on by

the other side. There the rate was regular on the face of it, but appeared by affidavit to have been voted by the parishioners in vestry for the purpose of meeting past disbursements, and there Lord Denman intimated an opinion that there was nothing in the objection that the purposes of the rate were retrospective, the rate being good on the face of it. But that was nothing but an *obiter dictum*, and was directly contrary to many decided cases. *Tawney's case*,<sup>i</sup> *The King v. Goodcheap*,<sup>j</sup> *The King v. The Churchwardens of Dursley*.<sup>k</sup> In *Lanchester v. Thompson*,<sup>l</sup> a Court of Equity refused to make a decree requiring a vestry meeting to be called to make a rate for the purpose of reimbursing a churchwarden, the Court holding that such a rate would be clearly illegal. It is plain, therefore, that this rate itself cannot be supported at law, and as the Ecclesiastical Court has entertained a suit for enforcing payment of it, the prohibition must issue.

Mr. Rogers in reply.—The plaintiff here has no right to anticipate that the ecclesiastical Court will exceed its jurisdiction, and decide against the law; and therefore he has no right now to apply for a prohibition. If the Ecclesiastical Court should exceed its jurisdiction, he may obtain a prohibition, even after sentence. *Leman v. Goultby*,<sup>m</sup> and *Dawson v. Wilkinson*.<sup>n</sup>

#### *Car. adv. vult.*

Lord Denman delivered judgment in this case.—In this case a declaration in prohibition had been filed respecting a suit in the Ecclesiastical Court, which suit had been previously instituted against the plaintiff for not discharging a church rate. The rate appeared to be good on the face of it; but the plaintiff, on being sued in the Court Christian, put in a defensive allegation to the effect that part of the rate was intended to be employed in the payment of debts previously incurred. The churchwardens, on the other hand, answered that in April, 1833, there was a meeting of the parishioners to make a church rate; but that the meeting was adjourned for a year, and no church rate granted, in consequence of which the churchwardens were obliged to incur debt; and that another meeting was subsequently held; and that the vestry then came to the resolution to pay the debts so incurred, and granted the rate now under discussion. Several objections were made to the prohibition. The first was, that the rate was regular and lawful on the face of it, and the design to employ it in the payment of past debts could not make it unlawful; secondly, that under the particular circumstances of this case, the rate could not be bad, even though it was retrospective; thirdly, that if the defect should be held to be fatal to the rate itself, still the plaintiff would

<sup>b</sup> 2 Ld. Raym. 1009      <sup>c</sup> 2 Bing. 361.

<sup>d</sup> *Auct.*, 15 L. O. 268; see also *Earl Beauchamp v. Turner*, 18 L. O. 222.

<sup>e</sup> 2 Har. & Wel. 9; 2 Ad. & El. 10.

<sup>f</sup> Tit. Prohibition, pl. 12.

<sup>g</sup> 5 Barn. & Cres. 1.

<sup>h</sup> 4 Ad. & El. 354.

<sup>i</sup> 2 Ld. Raym. 1009.      <sup>j</sup> 6 Term Rep. 159.

<sup>k</sup> 2 Har. & Wel. 9; 5 Ad. & El. 10.

<sup>l</sup> 5 Madd. 4.

<sup>m</sup> 3 Term Rep. 3.

<sup>n</sup> Cases Temp. Hardw. 381.

not be entitled to a prohibition, because the granting of a prohibition under such circumstances would be assuming that the Court Christian would exceed its jurisdiction, and set itself above the law; the enforcement of a rate being clearly a proper subject for that Court, if such a rate was valid in point of law. On this last ground it seems to us the demurrer to this declaration must prevail. There must be cases in which the proper remedy is not by a prohibition, but by an appeal against the rate itself. We cannot assume, as of course, that the Ecclesiastical Court will exceed its jurisdiction. We must assume that it will properly administer the law under which it sits. We adopt the doctrine of the case of *Ex parte Farmer*.<sup>a</sup>

*Griffin v. Ellis and another*, H. T. Q. B. F. J. 1838.

#### Exchequer or Pleas.

##### SIGNING JUDGMENT.—LACHES.

Where an order for time to join in demurrer has been obtained, it ought to be served within a reasonable time after making it, or the opposite party may sign judgment.

*Cowling* shewed cause against a rule nisi for setting aside a judgment on various grounds. It appeared from the affidavits that the plaintiff having demurred to the defendant's plea, a summons was taken out for time to join in demurrer, which was attended by the opposite attorney; and *Gurney*, B., in the presence of them both, made an order for two day's time for that purpose. The order was made at half past four in the afternoon of the 22d January, and instructions were instantly given in the presence of the plaintiff's attorney to the judge's clerk to draw up the order, which was accordingly delivered by five. It was not served, however, until between two and three o'clock on the following day, on the morning of which at half past eleven, judgment was signed by the plaintiff.

*Cowling* submitted whether the defendant was bound under penalty in either case, of having been deemed to have waived the benefit of the order, to serve it before nine o'clock on the evening of the day when it was made, or before eleven on the following day. One day is always allowed to give notice of the dishonour of a bill of exchange. The case of *Charge v. Farhall*,<sup>b</sup> seems to shew that the word "forthwith" is used in contradistinction to a delay of several days. In this particular case the plaintiff's attorney was present when the order was made.

*Parke*, B.—The attorney, it is true, may have been present at the making of the order, but how can he know from that whether the opposite party will elect to draw up the order and serve it or not? The real question is, what is a reasonable time to allow him to make that election? When the parties live within any reasonable distance of each other,

there is ample time from five in the afternoon until nine at night, to serve an order of this description. But at all events it ought to be served before the opening of the office next morning, or rather in strictness, before the time when the clerk of the opposite attorney would have to leave his office for the purpose of being present at the opening of it at eleven. Then as to the affidavit of merits, it is insufficient, for a man might with a safe conscience, interpret the word "defence" to signify merely a denial. The defendant had better amend, on the terms of pleading instantly and issueably, and taking short notice of trial.

*Alderson*, B.—With respect to the service of the order, it is requisite to have a somewhat rigid rule in these matters. The inconvenience would be great if parties were to be allowed time to consider whether they would avail themselves of orders which they would perhaps ultimately abandon.

*Gurney*, B. concurred.

Leave to amend on terms.—*Kenney v. Hutchinson*, H. T. 1840. Exch.

##### SEDUCTION.—PARENT AND CHILD.—SERVICE.

In order to maintain an action for seduction it must appear that the daughter was in the actual service of the father at the time the alleged cause of action arose.

This was an action on the case for seduction, and the declaration alleged, that *S. B.* the infant and unmarried daughter of the plaintiff, was a servant of the defendant by the consent of the plaintiff with the intention of returning to her father's house whenever she should quit the defendant's employ, unless she obtained another service. That the said *S. B.* was before &c. able and accustomed, and but for the grievance &c. would have continued to do and perform domestic services, and by means thereof to support herself without the aid of her father while so in service, and to render great assistance to her father as a domestic servant while with him. It then stated the seduction by the defendant, that she became pregnant &c., and thereby unable to perform any domestic services, and by reason thereof ceased to be the domestic servant of the defendant and returned to her father, and endeavoured as much as in her lay to render assistance as servant of her said father, but was unable to do so by reason of her pregnancy, and remained with her father till her death of the sickness and pregnancy aforesaid, by means whereof the plaintiff from the time when she returned to his house, (she during all that time being a poor person, an infant and unmarried, and not able to work) was forced to relieve and support his said daughter, and expend a large sum of money about nursing his said daughter, and was also deprived during all that time of her services, &c. There was a demurrer to this declaration, on the ground that the action would not lie, it not appearing that the daughter was in the service of the plaintiff at the time of the seduction by the defendant.

<sup>a</sup> 15 L. O. 268; 1 Will. Woll. & Hod. 19.

<sup>b</sup> 4 B. & C. 685; 7 D. & R. 422.

Alexander supported the declaration and contended, that although it was formerly considered indispensable to the maintenance of this form of action to shew acts of service done by the child for the parent, it is now laid down to be unnecessary to produce any proof of distinct service.

*Parke, B.*—Still a constructive service must be shewn in all cases. The law has been long settled so, and there is an express decision of *Littledale, J.* in *Mauder v. Venn*,<sup>a</sup> to that effect.

*Alexander.*—That is so here, for it is expressly averred that this girl left her father's house on an express understanding between them that she was to return there on her leaving service.

*Parke, B.*—That averment was evidently inserted with the view of shewing an *animus revertendi* in the party, and to assimilate the case to those where actions have been held to lie for the seduction of a child while on a visit to a friend. But there is this difference between the cases, that here, the girl is in actual service of another person, and it is only in the event of her not going into another, that she has any intention of returning to her father. That an action will not lie under such circumstances, there can be no doubt, as the point has been expressly decided in *Dean v. Peel*.<sup>b</sup> In order to sustain an action of this kind, two things are necessary, *damnum et injuria*. The plaintiff not having shewn any right to the services of his daughter, there is here *damnum absque injuria*.

*Alderson, B.*—This very point was once decided in a case in which I was concurred at Newcastle in 1819.

Judgment for defendant.—*Blumire v. Haley*, H. T. 1840. Exch.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES,

##### House of Lords.

Copyholds Enfranchisement. Ld. Brougham.  
[In Select Committee.]

Frivolous Suits Act amendment, touching costs.  
[For second reading.] Lord Denman.

Rated Inhabitants Evidence.  
[In Committee.]

Vagrants' Removal.  
[For third reading.]

Brighton Small Debts Court.  
[Passed.]

For facilitating the Administration of Justice.  
[For second reading, see the bill p. 387, ante.] Lord Chancellor.

For the commutation of Manorial Rights.  
Lord Redesdale.  
[For second reading, see the bill, p. 393, ante.]

##### House of Commons.

To amend the Law of Copyright.  
[In Committee.] Mr. Serjt. Talfourd.

To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tennant.  
[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

Lord J. Russell.

To extend Freemen and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.

[In Committee.]

To amend Tithes Commutation Act.

[For third reading.] Sir E. Knatchbull.

Small Debt Courts for

Aston, Marylebone,

Barkston Ash, Tavistock,

Bolton, Newton Abbott,

Liverpool, Wakefield Manor.

Summary Conviction of Juvenile Offenders.

[In Committee.] Sir E. Wilmot.

To amend the County Constabulary Act. Mr. P. Mainw.

To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

Prisons Act Amendment.

[In Committee.]

To consolidate and amend the Law of Sewers.  
[For second reading.]

To give Summary Protection to persons employed in the publication of Parliamentary Papers. [For 3d reading.] Lord J. Russell.

#### THE EDITOR'S LETTER BOX.

In this number we have made some exertion to put our readers in possession of a full account of the two great measures of legal reform of the present session; the Lord Chancellor's Bill for the reform of the Equity Courts, and of the Judicial Committee of the Privy Council, and Lord Redesdale's Copyhold Enfranchisement Bill. We have done this at greater length than usual, because we believe that we shall thus place before them the only bills of importance, which are likely to be introduced in the present session. The bill for the Recovery of Small Debts, is deferred until after the presentation of the Report of the Bankruptcy Commissioners, and we understand there is no probability of this being done in time for its recommendations being acted on immediately.

We think "A Constant Reader," should submit his case to the Examiners.

"A Law Student" is informed that a conveyancer, practising under the bar, may be called to the bar if he has kept twelve terms. As to the fees, we must refer him to the Sub-treasurer of the society to which he belongs.

The letters of "A Country Articled Clerk;" T. H.; "Vindex;" H. R.; "Ebor;" "A Country Reader," and "Civis;" with several Suggestions on Chancery Reform, have been received.

A correspondent is informed that there can be no alteration in the commencement of Easter Term. The four Easter holidays falling within it, on which the Courts will not sit, prolong the term till the 13th May.

# The Legal Observer.

SATURDAY, MARCH 28, 1840.

— “Quod magis ad nos  
Pertinet, et ne scire malum est, agitamus.

HORAT.

## THE REGISTERS OF DEEDS FOR THE COUNTY OF MIDDLESEX.

We have, ever since we have been in existence (now approaching to a period of ten years), from time to time called attention to the state of the Register's Office in the County of Middlesex. We have inserted various complaints respecting the mode in which its business was conducted; the number of holidays kept, the improper fees demanded, the insufficient attendance, and the delay which takes place in passing deeds through the office. In the beginning of the present session, Mr. Hayter, the member for Wells, moved for returns of the amount of fees received since 1824, and the actual expenses of the office; the number of holidays, exclusive of Sundays, kept in the year; the hours of attendance, and what duties are performed by the register in person; the rate of fees demanded in the years, 1822, 1823, and 1824; the number of deeds, and memorials relating to such deeds, left at the Register's Office during the months of November and December, 1839, and when such deeds were ready to be returned, and when such memorials were respectively entered in the books of the Register Office.

These returns have now been made, and we shall print them in a subsequent part of our work (see post, p. 440); but we shall also make a few remarks, as they appear to us to make out a clear case for some further steps being taken in the matter.

Of late there seems to have been some falling off in the amount of the fees received; but for the last ten years the receipts have averaged about 2850*l.*. The expenses of the office, which include rent, taxes, repairs, clerk's salaries, copying

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of memorials, and preparing alphabetical indexes and books of reference, have averaged about 850*l.*, leaving 2000*l.* surplus. This balance of fees is divided in equal proportions among the four registers, subject to a deduction of a salary of 50*l.* a year for a deputy register. Now we have never objected to paying all public officers well, where they have responsible duties to perform. Let us see, therefore, what these gentlemen do for their 500*l.* *per annum*, and this appears in the following paragraph of the return:—"The registers have been accustomed, *at different times*, to perform the duties required of them by the act of 7 Anne; *and have invariably attended, one or other of them, to examine and audit the quarterly accounts.*" We cannot quite understand this, but there appears to us to be a quiet humour about this answer, which is worthy of notice. In other words we presume it to mean this; "We do sometimes attend; we can't exactly say when, but one of us is always present at quarter-day. We never miss that, you may rely on it. Our deputy register is there on all days, except holidays and Mondays, for which we give him a snug 50*l.* *per annum*; and we make a point of coming four times a-year to receive the other 450*l.*" As, therefore, the registers have not told us of any other duty but this performed "*in person,*" we presume this is, in fact, all that they do; and we must say that they have a very pleasant time of it.

We now come to the work done by the deputy registers, and we admit—considering what he receives—it is rather hard to expect that he will do a great deal. And first, as to the mode of charging the fees. By the statute of Anne (7 Ann. c. 20, s. 11), the register shall be allowed for the entry of

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every memorial 1s., and no more, in case the same do not exceed 200 words; but if it exceed 200 words, then after the rate of 6d. a hundred for all the words contained in such memorial over and above the first 200 words. The fees, however, according to the return, demanded and received, are for memorials of the length of seven folios, or 500 words, 7s.; and beyond that length, 6d. for every 100 additional words. Now it seems quite clear that for a memorial of 500 words the register is only entitled under the act to the sum of 2s. 6d.; that is, 1s. for the first 200 words, and 6d. for every other 100 words, making 2s. 6d. The registers attempt to support this departure from the fees ordered to be taken by the act, by saying that it is in pursuance of an arrangement made between them and attorneys at the time, and that it has existed for 72 years, which reasons, as we think, are insufficient.

Next as to the holidays kept in the office. In 1825 these amounted to no less than 39. In 1839 they were reduced to 19; but we do not know any good reason why the Register Office should not be open all the year round, except on Sundays, Christmas Day, and Good Friday.

But the hours of attendance at the office are, perhaps, the most serious grievance of all. By sect. 12 of this act, the register is to give due attendance at his office every day in the week (except Sundays and holidays) between the hours of nine and twelve in the forenoon, and two and five in the afternoon, *for the dispatch of all business belonging to the office*, that is, six hours every day. Now how is this complied with? "The hours of attendance," says the return, "are from ten to three on each day, by the clerks. The register's or deputy's attendance is from eleven to one, EXCEPT on Mondays; but the office is open on this day likewise for the general purposes of business, only that parties cannot be sworn as to the due execution of the memorials and the deeds to which they refer, as this can only be effected whilst a register or deputy is sitting." Thus, first one hour's attendance is struck off per day for the whole business of the office; then Monday is made a dies non for the registers and their deputies; next the hours for attendance by them on the other days of the week is diminished from six to two; and when we consider there are four registers besides deputies, before any one of whom the parties, according to the return, may be sworn, we should like to know how many hours per week even each

deputy register attends. We need not ask how many hours the registers attend in person, because they have already told us that they attend four times a-year, on quarter day. This alteration, however, it seems was made with a view to the accommodation of the solicitors attending the office, "and apparently," say the registers, "except to a few captious persons, gives general satisfaction, the days of non-attendance of the register being now defined, instead of uncertain, as heretofore." But why were they uncertain? By the act, they are expressly defined, and the register was to attend for six hours every day for the dispatch of all business. Instead of which they ingeniously excuse their present neglect by referring to their former neglect as being worse. Whether the present attendance is better or worse than the former, we do not know; but we do know that both are contrary to the act of parliament.

We can only say in conclusion, that this return appears to us fully to justify the complaints which have been made against the Register's Office, and that the matter should not rest here, but that the inquiry should be pursued, and a proper remedy applied.

#### CHANCERY REFORM.

In our last Number, we laid before our readers the Lord Chancellor's Bill for the improvement of the administration of justice, and endeavoured to direct the feeling in favour of Chancery Reform into the proper channel. As far as we are able to collect, in giving a general approbation of the measure as an instalment in this great work, we spoke the sentiments of the profession. There may be parts of the bill which may be modified with propriety, but as a whole, as a means of disposing of the existing arrear, and of keeping it down for the future, we are of opinion, considering all the difficulties of the subject, that no better plan can be carried into execution. The only part of the scheme to which we have heard any serious objection, is the taking away the Master of the Rolls from his own Court for some portion of the year, and placing him as Vice President of the Privy Council. If this tends materially to render the Rolls a less efficient Court than at present, it is undoubtedly open to great doubt; still it is to be remembered that former Masters of the Rolls have frequently presided in the Privy Council, and that it is

difficult to find any other Judges so eligible for the Vice Presidency. We agree, however, that this part of the plan requires further consideration.

While this Bill has been brought in, in the House of Lords, a slight movement has also been made in the House of Commons. Sir Edward Sugden has for some time shewed a desire to deliver his sentiments on the subject of Chancery Reform. After some previous postponements, he gave a formal notice on the subject for Thursday the 19th of this month. It so happened, however, that Sir Edward was not in his place<sup>a</sup> when he was called on by the Speaker to bring on his motion, and that inexorable Judges declined to depart from the usual rules of the House in his favour, and his opinion was confirmed by the House. Sir Edward, although thus baulked of his speech, was determined to be delivered of his proposed plan; in this, reminding us of Pope's disappointed poet—

" Fir'd that the House rejects him, " 'Sdeath  
    'll print it,  
" And shame the rogues.' "

And he has accordingly printed a series of resolutions, which accompany the votes of the House, and contains his opinions on the subject of the necessary reforms, as well in the Court of Chancery as the Court of Bankruptcy, and in the House of Lords. These opinions deserve much attention and respect; we cannot however but regret that Sir Edward Sugden deprives these and others which he holds, of much of their weight by the petulance and over-confidence with which he frequently asserts them. He is undoubtedly an eminent lawyer, but there are other eminent lawyers in the House, as high in station, learning, and character as himself, and whose opinions as statesmen stand much higher. We venture to make these remarks, with the sincere desire that they may be taken as they are

meant, in good part, and that they may have the effect we intend.

We shall now shortly advert to the resolutions themselves, which will be found in a subsequent part of this Number. They do not appear to us to contain much, if any novelty. Sir Edward would abolish the Court of Review, and so would we, but surely having existed thus long, it is better before taking any step, to have the report of the Bankruptcy Commissioners. He would also remodel the Judicial Committee of the Privy Council, and make some alterations in the mode of hearing causes and appeals in the Court of Chancery, and these propositions may be well discussed when the Lord Chancellor's Bill reaches the House of Commons. We conceive, however, that the main object of these resolutions is to assert the opinion that no step should be taken in the reform of the Courts of Equity, before reforming the appellate jurisdiction of the House of Lords; and if so, we respectfully beg to differ from this opinion. The reform of the appellate jurisdiction must always be a work of great difficulty. The Lords are tenacious of their privileges, and nothing but a case of great urgency will ever induce them to abandon them. The most pressing grievance is undoubtedly the great arrear of original business in the Court of Chancery; and if we can get nothing else this session, let us at any rate gain a tribunal for disposing of this.

#### PARTIES IN SUITS BY JOINT STOCK COMPANIES.

In our eleventh volume, pp. 507—509, we collected the cases as to where it is, and where it is not, necessary to make all the shareholders of a joint stock company, parties to a suit in which they are concerned, and we laid down the rule to be, from those cases,<sup>a</sup> that where there is plainly a community of interest between all the shareholders, there a few persons may sue on behalf of the whole; but where there is a diversity of interest, then all the members may be made parties. It would seem, however, that the latter part of this rule will be relaxed in certain cases where the circumstances of the case require it. In the case of *Mare v. Malachy*,<sup>b</sup> a bill was

<sup>a</sup> *Lloyd v. Loaming*, 6 Ves. 773; *Gray v. Chaplin*, 2 Sim. & Stu. 267; *Small v. Attwood, Rounge*, 459; *Blair v. Agar*, 1 Sim. 37, *Evans v. Stokes*, 1 Keen, 24.

<sup>b</sup> 1 Myl. & C. 559.

filed by a person who claimed a certain definite interest in a mine and mining adventure as one of the number of co-partners, stating that the defendants who were the legal owners of the mine, and also co-partners in the adventure had, subsequently, unknown to the plaintiff, but with the consent of the other co-partners, and fully accounting to such co-partners for their shares of the profits up to the time, sold and conveyed the mine to trustees for a joint stock company, the property of which was held by a numerous body of proprietors in transferrable shares passing by delivery of the certificates, and had received the consideration for the sale, partly in money, and partly in shares in the joint stock company, and praying that the defendants might, at the plaintiff's election either account to the plaintiff for the proportion of the profits derived from the sale, or out of the shares of the joint stock company in their hands might transfer to him such a number of shares as would be equivalent to the interest which the plaintiff had in the original adventure; and the present *Lord Chancellor* held that a demurrer would not lie to such a bill on the ground that the other co-partners in this original adventure, or the trustees or shareholders of this joint stock company, were not made parties. "It is very desirable," said his Lordship, "not to be too strict in cases like the present, which are becoming more and more common every day. In the present instance however, for the reasons I have stated, it is not necessary to make any relaxation of the strict rules of the Court with respect to the parties." But at any rate it is quite settled that where the interest is a common one, all the shareholders need not be parties. This has been very recently decided by the *Lord Chancellor* in the case of *Taylor v. Salmon*;<sup>a</sup> and we call attention to the part of the judgment printed in italics.

"The appellant, however, sets up certain objections to the plaintiff's title to a decree; and first he objects that all the members of the company on whose behalf the bill is filed are not parties to the suit. I have before taken occasion to observe (see *Mare v. Malachy*, 1 M. & C. 559) that I thought it the duty of this Court to adapt its practice and course of proceeding as far as possible to the existing state of society, and to apply its jurisdiction to all those new cases which from the progress daily making in the affairs of men must continually arise, and not—from

too strict an adherence to forms and rules established under very different circumstances—decline to administer justice and to enforce rights for which there is no other remedy. I am not, however, in this case called upon to act upon this principle, as I find decisions already made which are amply sufficient to support the plaintiffs' right to sue in the form they have adopted. That where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others, is established. This was not disputed: but it was said that the plaintiff ought to have produced the deed constituting this company. I cannot think that necessary when I find the appellant, in the documents which are in evidence, describing his employers as a mining company, and when it is proved that he stipulated for a one thirty-second share." That it is necessary to produce the deed in certain cases in an action at law of a similar kind, see *Phelps v. Lyle*, 2 Per. & Dav. 314, and *cite*, p. 179.

## NEW BILLS IN PARLIAMENT.

### METROPOLITAN POLICE COURTS.

This bill has been brought in by the Secretary of State for the Home Department, "for better defining the powers of Justices within the Metropolitan Police District." It recites that by the 2 & 3 Vict. c. 47, s. 76, it is among other things enacted, that in the construction of that act the word "magistrate" shall be taken to include every justice of the peace acting in and for any part of the Metropolitan Police District for which no police court shall be established, and that if any offence against that act shall have been committed, or the offender apprehended in any part of the Metropolitan Police District for which no police court shall be established as aforesaid, the matter of such complaint may be also heard and determined by any two or more justices acting in and for the county in which the offence was committed or the offender apprehended; and it is expedient that the meaning of these enactments be more clearly expressed and that further provisions be made for defining the divisions for which police courts are established within the Metropolitan Police District: it is therefore proposed to be enacted, that so much of the said act as is hereinbefore recited shall be repealed.

2. That it shall be lawful for her Majesty, with the advice of her privy council, from time to time to constitute within the Metropolitan Police District so many police court divisions, as to her Majesty shall seem fit, and to define the extent thereof, and from time to time to alter the number and extent of such police

<sup>a</sup> 4 Myl. & C. 134.

court divisions, and to assign a division to each of the police courts already established, and to establish a police court for each of the other divisions: provided always, that nothing in this act contained shall be construed to restrain the police Magistrates appointed to the said Courts from acting in all places within the limits of their commissions as fully in all respects as if this act had not been made.

3. And reciting that by an act passed in the last session of parliament, intituled "an Act for regulating the Police Courts in the metropolis," it is provided, that one of the magistrates appointed to the said courts shall attend on every day (except as therein excepted) at each of the police courts established or to be established within the Metropolitan Police District; and that the business of a police court in the outer parts of the Metropolitan Police District will not require the daily attendance of one of the said magistrates; it is proposed to be enacted, that so much of the last recited act as requires the daily attendance of one of the said magistrates at each of the said courts shall be taken to apply only to the police courts now established in Bow Street, and in the parishes of Saint Margaret Westminster, Saint James Westminster, Saint Marylebone, Saint Andrew, Holborn, Saint Leonard Shoreditch, Saint Mary Whitechapel, and Saint John of Wapping, in the County of Middlesex, and Saint Saviour in the County of Surrey, and shall continue to apply to the said Courts, wheresoever they may from time to time be holden or removed to within the Metropolitan Police District.

5. That it shall be lawful for her Majesty, if she shall think fit, with the advice of her Privy Council, to order that a police magistrate or magistrates shall attend regularly at any police court or courts hereafter to be established, either daily or on such days and times as her Majesty, by the advice aforesaid, shall order; and it shall be lawful for her Majesty, from time to time, with the advice aforesaid, to alter or rescind any such order.

5. That every order in council, either for constituting or altering a police court division, or for assigning a division to the police courts already established, or for establishing or removing a police court, or for ordering the regular attendance of a police magistrate or magistrates at any police court or courts, or for altering or rescinding any such order, shall be published in the London Gazette, and shall take effect from the time appointed for that purpose by the said order.

6. That any two justices of the peace having jurisdiction within the Metropclitan Police District shall have, while sitting together in any part of the said district within the limits of their coimission, except in the divisions to be assigned to the police courts already established, all the powers, privileges, and duties which any one magistrate of the said police courts has while sitting in one of the said courts by the two recited acts of the last session of parliament or either of them: Provided always; that whenever a new police court shall

have been established, and a division assigned to such court as aforesaid, such justices shall not act in that division, in the execution of the two said acts or either of them elsewhere than at such court; and that at every police court at which the regular attendance of a police magistrate shall have been ordered by her Majesty as herein-before provided, the police magistrate while present in such court shall act as the sole magistrate thereof.

7. That so much of the last-recited act as provides that no clerk in any of the police courts shall hold or have any other office or employment whatsoever, except as therein excepted, shall be taken to apply only to the police courts now established: provided always, that no person, being clerk to any vestry, or to any board of guardians of the poor, shall act as clerk in any police court, or as clerk to the justices acting in any division within the Metropolitan Police District.

8. Form of recognizance, information and conviction.

9. That whenever any person shall be charged before any police magistrate or before any two justices at any police court within the Metropolitan Police District with any felony or misdemeanor for which he is liable to be committed to take his trial at the assizes to be holden for any of the counties of Essex, Hertford, Kent, or Surrey, it shall be lawful for such police magistrate or for such justices, if he or they respectively shall think fit, to suffer such person to go at large upon a recognizance conditioned for surrendering himself to take his trial at such assizes, in like manner as such recognizance may be taken for his surrender to take his trial at the Central Criminal Court in cases where he is liable to be committed for trial at the Central Criminal Court; and every such recognizance shall be within all the provisions of the last recited act relating to recognizances for surrendering to be tried at the Central Criminal Court.

#### NOTICES OF NEW BOOKS.

*An Historical Sketch of the Law of Copyright: with remarks on Serjeant Talfourd's bill: and an Appendix of the Copyright Laws of foreign countries.* By John J. Lowndes, Esq. London: Saunders and Benning.

The principle of the bill for amending the law of copyright, has been stated in so masterly a manner by its author, Mr. Serjeant Talfourd, and all the reasons in its favour have been so eloquently urged, and the prominent objections refuted again and again by the learned Serjeant, that we should have thought the work now before us was scarcely necessary. The opposition, however, to the bill has been so long and perseveringly continued that new advocates in its behalf ought to be welcomed.

Mr. Lowndes states that—

"The object of the following little treatise is to give a succinct historical account of the origin of the property known as 'copyright,' and of the modifications and alterations it has subsequently undergone down to the present time.

"The motive in laying it before the public, is to attempt to remove the misapprehensions which prevail with regard to this species of property, both as to its former existence, and as to the effect and expediency of the measure proposed by Serjeant Talfourd.

"It will be seen by the Appendix, that in almost every country but Great Britain, copyright is continued for some period after the author's death, for the benefit of his heirs; and yet a bill for this purpose has been for three sessions before the British legislature, and each session postponed: and this, owing not so much to any opposition existing to its principle, which has been each time affirmed by respectable majorities, as to the apathy with which every question is treated, which does not awaken the spirit of party, or touch the ever-sensitive chord of self-interest; and which has thus suffered an insignificant minority to defeat it in detail.

"I feel sensibly that more time and study than have been in my power to bestow, are necessary to do justice to this subject; but if, by the perusal of the following pages, the reader is convinced that such a right as that known by the name of copyright, did formerly exist at common law, and was only taken away by a mistaken interpretation of the effect of the statute of Anne, and that the state of the present law is such as imperatively demands alteration; I shall not consider the few leisure hours I have appropriated to their composition from the severer duties of my profession, as either mispent or unprofitably employed."

The author treats of his subject:—1st From the invention of printing to the formation of the Stationers' Company in 1556. 2d.—From the latter period to the rebellion in 1640. 3d. From 1640, to the restoration in 1660. 4th. From 1660, to the accession of William and Mary in 1688. 5th. From 1688, to the accession of Anne. 6th. From the accession of Anne, to the passing of 8 Ann. c. 19. 7th. From the 8th Ann. to the case of *Miller v. Taylor*, in 1769. 8th The case of *Miller v. Taylor*. 9th. From 1769, to the case of *Beckford v. Hood*, in 1798. 10th. From the 41 Geo. 3, c. 107, to the 54 Geo. 3, c. 156. 11th. From the 54 Geo. 3, c. 156, in 1814, to the year 1836. 12th. The motion of Mr. Serjeant Talfourd in 1837, to the accession of her Majesty. 13th. The proceedings respecting the amendment of the copyright laws, in the first session of the present parliament. 14th. The International Copyright Bill, and

the proceedings on Mr. Serjeant Talfourd's bill in 1839. 15th. Observations on the bill.

Passing over Mr. Lowndes's historical sketch, subdivided into fourteen chapters, in which he has traced the recognition of copyright by decrees of the Star Chamber, Ordinances of State, usages, and bye laws of the Stationers' Company; the received opinion of the common law right at the passing of the 8 Ann. c. 19, confirmed by the decision of *Miller v. Taylor*, and the subsequent measures in diminution or increase of the author's right:—we come to his observations on the present bill. Mr. Lowndes notices the several objections to the principle of the bill, which are of course familiar to our readers from the debates in parliament. He appears to doubt whether the extension of the copyright should be exactly sixty years from the death of the author, and indeed, he says he is inclined to think "that two thirds of that period or perhaps even less would be sufficient." We believe that sixty years was fixed upon as a period known to the law, and admitting of evidence of title being adduced without much inconvenience.

Mr. Lowndes then enters upon some of the details of the measure, which, he thinks, might be altered before it is passed into a law.

"Such, for instance, as the anomaly which has been objected to it, with regard to works already published, of giving to an author who has retained the whole, or a portion of the interest in his own hands, the benefit of the extension of the term; but denying it in the case of another, who, not having the same means or good fortune, has assigned away all his interest. There is no other reason for this distinction, but because in such cases, the assignee cannot claim the future term, for which he has paid nothing; and it cannot be given to the author, for it would be unjust to the assignee, since the assignee, in making his bargain with the author, calculated with reference to the present law, that he should have the same right, at the expiration of his term, to print it, as the rest of the world, and a greater, practically, by the custom of the trade amongst booksellers; and therefore it would not be fair to compel him, either to pay for the future term, or forego the advantages he would otherwise have had when his copyright expired, in publishing the work under the present law. And what objection can there exist to a clause being framed, giving the author or his heirs, in such cases, a power to assign the future interest *only to one party*, namely, to the assignee of the original term? In the case of a work of merit, the interest in which has been wholly assigned, the publisher to whom it is assigned would be very willing

to purchase the extended period on terms very advantageous to the author; and it would be hard, under such circumstances, where it could injure no one, that the author should be deprived of the benefit, merely because he had not retained a share of the interest in his own hands. And where the author and the assignee could not agree upon terms, and no such future assignment was made, then the copyright should expire, as it would otherwise do, under the present existing law. Those who are captious enough to take extreme objections, may urge that a case might arise, where a bookseller might capriciously refuse to purchase, except at terms extremely disadvantageous to the author; and thus the author would be left wholly at his mercy. But those who would urge this, forget altogether, that without such a clause, no author at all, who has assigned away the whole of his interest, can receive any benefit by the bill as it now stands.

"And again, a clause, allowing parties to print a book when out of print for five years, on advertising publicly their intention so to do, and suffering a year from the date thereof to elapse, is much objected to, on account of the difficulties it is supposed in practice it would present; but it might perhaps be altered into a clause to the same effect, without the same inconveniences. For instance, if proof of demand made at the house of the publishers of the last edition, once every year, for three, four, or five successive years, with the same answer, that it was out of print, (or any other proof of a similar nature, that the work had been out of print for four or five years,) should be held to be a *prima facie* case, to entitle a party to reprint it, and throw the *onus* of showing that he was aware that it was not out of print, or that a new edition was preparing, on the author or his assignee. Such a clause would protect the owner of copyright; at the same time it would not check enterprise, by obliging publicity to be given to a speculation of a purely mercantile nature, and thus awaking competition. It is absurd to contend, as has been done, that a publisher, not wishing to reprint himself, nor that others should reprint, might keep some copies by him to shew that it was not out of print; for if the work was worth reprinting, a sale would be found for these remaining copies, and he could not refuse to sell."

In conclusion, Mr. Lowndes thus ably and appropriately sums up the argument in favour of the general principle.

"Therefore we doubt not that a measure, so imperatively one of national justice, which has for its object the benefit of the good and the great, and tends to make the reward of merit proportionally greater than that of fortune; which allows genius and learning to pursue their labours in the face of death, secure in the knowledge that the fame which posterity will confer on their name, will not be unaccompanied by substantial benefits to their family, and that they have not to blame themselves for pursuing an empty vanity, and

neglecting the provision of a competence for those they leave to bewail their loss; but have obtained the one by the same efforts as the other, and fulfilled at the same time their aspirations for fame and their duties as members of society—will receive the unqualified sanction of the legislature—and we shall then at least have done something to avoid that eloquent reproach of Dryden,—“that it continues to be the ingratitude of mankind, that they who teach wisdom by the surest means, shall generally live poor and unregarded, as if they were born only for the public, and had no interest in their own well-being, but were to be lighted up like tapers, and waste themselves for the benefit of others.”

## THE LORD CHANCELLOR'S BILL, AND PROPOSED FURTHER RE- FORMS.

*To the Editor of the Legal Observer.*

Sir,

IN calling your attention to the provisions of the bill brought in for the amendment of the proceedings in Chancery, and intituled “An Act for facilitating the Administration of Justice,” I beg to submit to the consideration of those interested in the measure, whether it will not have the effect only of removing the pressure of business and the consequent delay from the Courts, and increase those evils at the *Masters' offices*, unless some provision beyond that contained in the bill, is supplied to obviate them. The present number of Masters with their clerks, are, I believe, not more than sufficient to cope with the amount of the business at present before them; and I much doubt whether the present Masters and their clerks, with the addition of another Master and his clerks, will be sufficient to manage the present business of the Court of Chancery and the Court of Exchequer, and also the extra business which will be sent to them by the two additional Judges.

The bill contemplates an increase of business in the Registrars' Office, where the orders of the Court are drawn up; but how much more must the business of the Masters and their clerks be increased, by whom the greater part of those orders are carried out.

As the most heavy part of the proceedings in the Masters' Offices lay with the head clerks, I beg to submit whether it will not be advisable to empower the Lord Chancellor to appoint *one additional head clerk to each Master*, in case the pressure of business in their offices become too great for a single one to manage.

The present bill provides for the Lord Chancellor taking original causes, which, with great submission, I consider an objection, as it deprives the party of an appeal to any other tribunal than that expensive one, the House of Lords; and it must be far from satisfactory to the feelings of that Judge, who without the guidance of a previous decision, must, at the

time he decides, feel that his decision can only be appealed from at a considerable expense—an expense which would oblige a great many to forego a right sooner than encounter; and if the Lord Chancellor does take original causes, I beg to suggest that some tribunal ought to be provided to whom appeals from his decision would be no more expensive than those are from the decisions of the Master of the Rolls and the Vice Chancellor to the Lord Chancellor.

H. P. J.

Sir,

In perusing the "observations of a solicitor, on defects in the offices, practice, and system of costs in the equity courts," and the supplement to the same, so far as respects the Six Clerks' Office, and the plan therein proposed, every solicitor acquainted with the practice of the Court of Chancery, will admit that the alterations proposed, which it is stated will be a saving to the suitor, to the extent of 40,000*l.* per annum, ought immediately to be carried into effect,

It is reported that no alteration is to be proposed as respects this department of the Court: it therefore necessarily becomes the duty of the Law Institution, and the general body of solicitors representing the suitors of the Court, to bring forward the necessary reform, and which it is to be hoped will be immediately done, before any partial alteration is made in the Court of Chancery.

As respects the six clerks, it is admitted by every person acquainted with that office, that they are entirely useless.

As respects the sixty clerks (with the exception of one or two) they only attend to that part of their business which relates to the taxation of costs, the rest of their business being left to their clerks, whom they call agents.

The number of sixty clerks practising, it is believed, amount to twenty-eight, and the number of agents to these gentlemen, seven.

Of the twenty-eight "sixty clerks," it is believed more than three-fourths of the business is done by three, or at the most four of those gentlemen, so that if five or six of the sixty clerks and the seven agents were to be made an efficient body, (instead of the six clerks and the sixty clerks) those twelve or thirteen persons would be able to do the whole of the business of the Six Clerks' Office.

This is to be accomplished by alterations being made as respects the six clerks and sixty clerks, similar to what was done when the Court of Exchequer of Pleas was made available to all solicitors.

Considering, therefore, that the six clerks are useless, being also persons advanced in years,—that the business as respect the sixty clerks, is principally done by three or four,—and that since Lord Brougham's Chancery Act several sixty clerks have died,—the present time should not be lost for effecting the saving to the suitor and compensating the present officers of the establishment, the majority of whom it is believed, would be very glad to acquiesce in such an arrangement, and thereby,

be enabled to turn their attention to some other business.

Last year one of the sixty clerks died, who, it is believed was realizing a profit of 500*l.* per annum; in a few years his successor will of course be entitled to compensation on that amount, whenever a reform takes place in the Six Clerks' Office.

#### A PRACTISING SOLICITOR.

[Our correspondent is mistaken in supposing that no alteration is contemplated in the Six Clerks' Office. We believe the Lord Chancellor will not be content with carrying the bill now before parliament, but that another bill for reforming the offices of the Court is in preparation. Ed.]

### HOUSE OF LORDS AND COURTS OF CHANCERY.

THE following are Sir E. Sugden's proposed resolutions on the appellate jurisdiction of the House of Lords and Court of Chancery.

1. That it is expedient to abolish the Court of Review in Bankruptcy, as far as regards the judges of that Court, and to restore the jurisdiction of the Great Seal and the Vice Chancellor.

2. That it is expedient to abolish the Judicial Committee of the Privy Council, and to re-model the Court.

3. That it is not expedient to take away any equity judge from his Court for the performance of judicial functions elsewhere, without an absolute necessity.

4. That it is expedient, in the contemplated creation of new Courts of Equity, to make provision for the independence of the judges, and, by orders of Court, to make provision for the regular hearing of causes according to their priority, so that no cause may be advanced out of its turn without sufficient cause; and for the regulation of the hearing of short causes, so that important points of law may not be decided hastily and without due deliberation; and also provision for having in each Court a list of the judgments in arrear always hung up in Court, and a copy thereof delivered to the judge by the registrar on the first Monday's sitting in every month; and likewise provision that no case be postponed in hearing on account of the absence of counsel in another Court, unless (if the judge shall think fit) where the counsel has followed a case upon appeal.

5. That it is expedient that the appointment of the Masters in Chancery should again be vested in the Lord Chancellor, instead of the crown; and that the master's offices should be re-modelled, and their sittings be made public.

6. That it is expedient that the Lord Chan-

cellor shall continue to hear motions, appeals, and other matters in the Court of Chancery, and that causes be re-heard in the Courts below; but that no appeal be re-heard by the Lord Chancellor.

7. That it is expedient that the decision of the Lord Chancellor shall be final where both parties have entered with the registrar a consent that the appeal be heard by the Lord Chancellor; and that the Lord Chancellor's decision, whether in the first instance or upon appeal, in interlocutory matters, should be final, subject to certain exceptions.

8. That it is expedient that the Court of Appeal in the House of Lords should consist of the Lord Chancellor and two judges, to be appointed during good behaviour, and to be called Lords President, but not necessarily to be peers; and that the Lords President be at liberty to act as judges during the hearing, and to openly deliver their judgments, but not to have voices if not peers.

9. That it is expedient that the House of Lords, when the arrear of appeals may render it necessary, should sit to hear appeals only, notwithstanding a prorogation.

10. That it is expedient that the House of Lords should have the power of summoning the equity judges upon the hearing of appeals, in like manner as they have the power of summoning the fifteen judges.

11. That it is expedient that the appeals in the House of Lords should be heard with as many of the forms and regulations of the superior courts of justice as are consistent with the jurisdiction and authority of the house.

12. That it is expedient that the two Lords President should sit and hear the matters now referred to the Judicial Committee of the Privy Council; and, with that view, that the Privy Council should be re-modelled as a court.

13. That it is expedient that the Lords President sitting in the Privy Council should have power to call to their aid any other judge, except the Lord Chancellor, and that the Lord Chancellor might attend, upon their request, if he should think it proper.

14. That it is expedient that one of the Lords President should be styled Chief Lord President, and should preside at the Privy Council whenever another judge is called in.

15. That it is expedient that where the two Lords President sit alone, but cannot agree, the case should be adjourned into the House of Lords, to be there heard and decided like any other case.

16. That it is expedient that the hearing of the appeals before the House of Lords and the Lords President respectively, should, as far as possible, be so regulated as to give to the House of Lords and the Court fixed days for hearing of appeals throughout the sitting.

## SUGGESTED IMPROVEMENTS IN PRACTICE.

### TIME TO PLEAD.

Sir,

I beg to suggest, through your valuable publication, to the Judges, that they should never allow a defendant time to plead unless the first application is supported by an affidavit that he has a good defence, either upon the merits or in law. This would do away with the great delay to plaintiffs in recovering their just debts, as the defendants would not in many cases plead for fear of the Insolvent Court remanding them for vexatious defences. I would alter the time for pleading from four to eight days, and from eight to twelve days.

A SUBSCRIBER.

### ATTORNEY'S PRIVILEGE.

Sir,

I sued an attorney in the country for half a year's rent on lease, due to an old lady. The writ was in the Common Pleas, and this respectable gentleman sent me a plea protesting against the jurisdiction of that Court, and claiming to be sued in the Queen's Bench only, not being an attorney of the Court of Common Pleas.

Since the late acts of parliament afford every attorney the opportunity of becoming a member of each of the Courts, and enable him also to recover fees for business done in a Court of which he is not a member—such pleas ought to be abolished. They afford, as in this case, an attorney the means of putting suitors to a needless and useless expence, as the costs are lost.

J. W.

## QUEEN'S BENCH JUDGMENT OFFICE.

We are informed by the Senior Clerk in the Queen's Bench Judgment Office that the complaint of delay in transacting business in that office by "An Attorney," inserted in the Legal Observer of Saturday last (p. 407, *ante*), can easily be proved from the books to be unfounded. In what is called a busy day, the clerk makes from one hundred to one hundred and twenty entries within the four hours the office is open in vacation; and which, at the rate stated by "An Attorney," would occupy twelve hours at the least. His statement respecting the office hours is also incorrect; they are not "much shortened," the only alteration being that an hour is taken from the attendance in vacations, and added to that in the terms. We consider, therefore, that the imputation against the clerk of want of atten-

tion to his duties, and not using dispatch, is effectually answered; and we believe it is well known to many gentlemen in the profession, that Mr. T. Barlow, the present Senior Clerk, during the twenty-seven years of his service in the office, has not eaten the bread of idleness.

We understand that the business of the office has of late considerably increased.

The letter containing the complaint may be seen at our publisher's by the Clerk of the Judgments.

### TRUSTS FOR SEPARATE USE.

*To the Editor of the Legal Observer.*

Sir,

The haste with which my former letter (page 372) was written, (which was caused by my having received your 575th number a few days later than usual, and my wish to take the earliest opportunity of noticing the letter of H. B., and your observations thereon, contained in that number,) must be my apology for my inadvertent error, which you properly correct, in implying that you were of opinion that trusts for separate use, not protected by a restraint on alienation, were invalid as against the marital rights of the husband. This certainly was my first impression, though I felt afterwards that your observations did not warrant that conclusion, but I inadvertently omitted to strike out that part of my letter which implied that we differed upon that point. My mistake occurred to me after I had sent my letter to the post, and I was only prevented from writing to correct it by my uncertainty whether the letter would ever make its appearance in your pages or not, and by my wish not to trouble you too much at once.

The only point therefore in which, as it appears to me, we differ, is as to the alienation of separate estate; and the main object of my letter was to combat what I supposed to be your opinion upon that point, viz. that separate estate was inalienable during coverture, whether *expressly* accompanied by a restraint on alienation or not. This part of my letter, you must permit me to say, you do not notice, and I cannot therefore discover whether or not I rightly understood your opinion, and if yea, whether or not you still adhere to that opinion.

Whilst I am writing you will perhaps permit me to correct an apparent error in my reference to the case of *Beadle v. Dodd*, in support of prop. 2. I find that though the devisee was a *feme covert* at the date of the will, she was a *feme sole* when it came into operation, and therefore this case will more properly be an authority for prop. 3. This leaves prop. 2 unsupported by any cases; but, as mentioned in my former letter that proposition is clearly supported by the principle of the cases referred to in prop. 3.

I beg to thank you for the handsome manner in which you have inserted my former com-

munication, and can only plead the importance of the subject from its having been so long a *verata questio*, as my excuse for presuming to trespass so much on your valuable space.

B. B.

### CHARGES OF UNQUALIFIED PRACTITIONERS.

*To the Editor of the Legal Observer.*

Sir,

You did me the honor, on a former occasion, of inserting in your excellent publication a communication of mine on the subject of Unqualified Practitioners. I have lately had put into my hands a bill of costs, of one of these Quasi Attorneys, and subjoined, I send you a copy of it for insertion in the Legal Observer, if you think it worthy of a place.

Mr. ——, To Mr. ——

183	Getting ——'s money	0	0	6
March 9	——'s letter . . . .	0	2	0
	——'s letter and journey to —— . . . .	0	2	6
11	For post letter from ——	0	1	0
28	Post letter from Mrs. ——	0	1	0
April 4	Getting ——'s money . . . .	0	1	0
	Carriage from —— . . . .	0	0	10
	Mrs. ——'s letter and jour- ney to —— . . . .	0	2	6
22	——'s letter and journey to —— . . . .	0	2	6
	Getting ——'s money . . . .	0	1	0
24	Getting ——'s money . . . .	0	1	0
	Easter Term, ——'s writ, copy, and service . . . .	2	10	0
26	——'s summons, copy, and service . . . .	0	13	6
May 5	Attending and searching for appearance . . . .	0	2	0
10	Getting ——'s money . . . .	0	1	0
Nov. 19	——'s summons, copy, and service . . . .	0	10	2
	Returning same, paid officer to call him in Court, prov- ing the service and oath . . . .	0	2	0
	Searching for appearance . . . .	0	1	0
	Calling on —— . . . .	0	0	6
		4	16	0

I blush for the character of the profession, while I state that there are two attorneys, gentlemen by courtesy, one residing in London, the other in the country, who supply their Quasi Brother with writs, upon receiving retainers from him for that purpose, without seeing or having any knowledge whatever of the plaintiffs in the actions.

B.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## WIFE'S REAL ESTATE.—HER EQUITY FOR MAINTENANCE.

A. being entitled in right of his wife to real estates for her life, subject to outstanding terms created for raising portions, &c. and having, on taking the benefit of the Act for relief of Insolvent Debtors, assigned his estate and effects, the assignee filed a bill to be declared entitled to the rents of the estates, subject to prior incumbrances, during the joint lives of A. and his wife. Held, by the Lord Chancellor (overruling the Vice Chancellor's decree), that the wife was entitled in equity to a provision out of the rents for her maintenance.

The bill was filed by the provisional assignee of the Insolvent Debtors' Court, against Sir Thomas Mostyn Champneys, Lady Champneys, his wife, and other defendants; and it stated, among other things, that Sir Thomas had taken the benefit of the Insolvent Debtors' Act in 1827, and again in 1834, and executed the usual assignment of all his estate and effects to the provisional assignee of that Court, in trust for his creditors, and that the plaintiff had been duly appointed such provisional assignee, in place of a former assignee. The bill then stated the will of Sir Roger Mostyn, the father of Lady Champneys, dated in 1793, by which, after giving certain annuities to his daughters, which were to cease on their marriage respectively, he devised all his real estates to trustees for a term of 500 years, in trust out of the rents and profits, or by sale, to pay debts, legacies, annuities, &c. in aid of his personal estate; and subject to that term, he devised his estates to his son, Thomas Mostyn, for life, remainder to his son's sons in tail male, &c.; remainder to the same trustees for a term of 1000 years, on trust, after any of his daughters should have come into possession, upon failure of issue of his son, by sale or mortgage to raise and pay to each of his other daughters then living 10,000*l.*, and subject to the trusts of such term, to the use of his eldest daughter, Essex Mostyn, and her issue in tail, with remainder to the use of his second daughter (Lady Champney's) for life, remainder to her first and other sons in tail, with remainders over. The bill then stated the death of the testator in 1796, and of the testator's only son, without issue, in 1831, and the previous death, without issue, of the eldest daughter; and that Lady Champneys, on the death of the son, became entitled to the estates as tenant for life, and she and her husband, in her right, entered into receipt of the rents and profits. It then stated that two of the other daughters of the testator remaining unmarried, were entitled to their annuities under the 500 years' term, but that all the other annuities and legacies had been paid, and that the sum of 41,000*l.* had, under a decree of this Court, been raised to satisfy the trusts of the term for securing

payment of the debts, and that all the estates, except part included in a former mortgage of 7000*l.*, had been mortgaged to the parties who advanced the 41,000*l.*, and that the legal estate in all the property was vested either in the mortgagees of the 41,000*l.* or of the 7000*l.* The bill then alleged, that owing to the legal estate being vested in, or held in trust for the several mortgagees, the plaintiff was unable to obtain possession of the lands, or to enter into the receipt of the rents and profits by means of any legal process, and it prayed a declaration of the title of the plaintiff (as such assignee) to the life estate of Lady Champneys in the property, during her coverture, subject to the prior incumbrances, and for consequential relief.

Lady Champneys, in her answer to the bill, stated that she had, in order to enable her husband to pay his debts, given up the benefits of the settlement that was made on her marriage, and had derived no maintenance from her husband since 1824, and she claimed a settlement and maintenance out of the rents and profits of her own estate.

The case was heard before the Vice Chancellor in July last, when his Honor, by his decree, declared the plaintiff, as such assignee, to be entitled to the estates, and the rents and profits thereof, from the death of the testator's son, during the coverture of Lady Champneys, subject to the prior charges and incumbrances, and that Lady Champneys was not entitled to any settlement or allowance for her maintenance and support out of the rents and profits thereof, and he referred it to the master to take an account of the rents and profits received by Sir Thomas Champneys since the date of his last discharge.

Lady Champneys appealed from that decree. Mr. Stuart and Mr. Parry in support of the appeal; Mr. Wiggram and Mr. Reynolds for the plaintiff, supported the Vice Chancellor's decree. Mr. Jacob, Mr. Richards, and several other counsel, were for different defendants. The line of argument may be understood from the subjoined judgment. Besides the cases there referred to, the following were cited in the argument: *Prior v. Hill*,<sup>a</sup> *Elliott v. Cordell*,<sup>b</sup> *Aguiler v. Aguiler*,<sup>c</sup> *Ex parte Thompson in re Thompson*,<sup>d</sup> and Roper's Law of Husband and Wife, *passim*. It was said in the argument that the estates in which Lady Champneys took a life interest under her father's will, produced 10,000*l.* a-year; and that about 40,000*l.* had been paid into Court, under a former decree.

The Lord Chancellor, having taken time to consider the case, now delivered judgment. After stating the bill and answer, and the decree appealed against, his Lordship proceeded thus:—The effect of this decree is to give, by the interposition of this Court, to the assignees of an insolvent husband, the whole of the income of the life estate of the wife, leaving her entirely destitute. I have not had the advantage of seeing any note of the judg-

<sup>a</sup> 4 Bro. C. C. 138.

<sup>b</sup> 5 Madd. 156.

<sup>c</sup> Id. 414.

<sup>d</sup> 2 Scott, 266.

ment of the Vice Chancellor, and have therefore no other knowledge of the grounds on which his decree was founded, than what I was able to collect from the arguments of counsel, who appeared before me in support of it, and, as I understand the arguments, it was contended that this Court will not secure a provision to the wife, unless the property is such as to be a proper subject for equity; and in this case, the devise for Lady Champneys is of a legal estate for life, and it was by the accident only of the prior incumbrances being still subsisting that the plaintiff is compelled to come here. This Court, it is true, for many purposes, acting on the principle of following the law, will deal with property coming under its cognizance, the legal estate being outstanding, according to the rights of the parties as they exist at law; but that is far from being universally true. The decree in *Cholmondeley v. Clinton*, and the cases on which that decree is founded, are instances to the contrary. There are many cases in which this Court will not interfere with the right which the possession of a legal estate gives, though the effect will be directly opposed to its own principles as administered between parties having purely equitable interests, such as in cases of joint incumbrances, without notice, giving the preference to the prior incumbrancer by procuring the legal title. It may be regretted that the rights of parties should thus depend on accident, and be decided, not according to any merits, but upon grounds purely technical. That, however, has arisen from the jurisdiction of law and equity being separated, and from the rules of equity being better adapted than the simplicity of common law to the transactions of society, though applied to subjects without its own exclusive jurisdiction, having in many cases been extended to control matters purely subjects of the jurisdiction of the courts of common law. Hence arises the well-known and beneficial rule of this court, that he who asks for equity must do equity. This Court refuses its aid to give the plaintiff what the courts of common law would give him, if they had jurisdiction to enforce it, without imposing on him conditions with which this Court considers he ought to comply, though the subject of the conditions is one which this Court would not otherwise enforce. If, therefore, this Court refuses to assist a husband who has abandoned his wife, or the assignee of an insolvent husband, without securing for her a proper maintenance, it not only does not violate any principle, but acts in strict conformity with the rule by which it regulates its proceedings in other cases. The case of *Lady Elibank v. Montolieu*<sup>e</sup> was cited in the argument, to shew that a wife may come into this Court to assert her title to a settlement, and that her claim does not rest merely on the ground of compelling the husband or assignee seeking equity, to do equity. But here, as the assignee is plaintiff, it is not necessary to go beyond the facts before me. If that case were applicable to this, it would only prove

that Lady Champneys might have come herself as plaintiff, to claim that which she now asks to have imposed as a condition on the relief sought by her husband's assignees; but the existence of that higher equity would not deprive her of that which she now asks. On a careful examination of the authorities, I do not find the time at which the court did not assume this jurisdiction in favor of the wife. In *Bosril v. Brander*,<sup>f</sup> in which the wife was mortgagee in fee, and the decision was against her, she being plaintiff, the Master of the Rolls, recognising the rule says, "it might have been a matter of different consideration if the assignees had been plaintiffs in equity, and desired the aid thereof to strip an unfortunate widow of all that she had in the world, towards the doing of which equity would hardly have left its assistance." Many cases came afterwards, in which the principle was recognised. His Lordship cited passages from the judgments in *Burdon v. Dean*,<sup>g</sup> *Oswell v. Probert*,<sup>h</sup> *Bell v. Montgomery*,<sup>i</sup> *Brown v. Clark*,<sup>j</sup> *Freemay v. Parsley*,<sup>k</sup> *Mitford v. Mitford*,<sup>l</sup> and *Wright v. Morley*,<sup>m</sup> and then proceeded thus:—From these authorities, and many others which recognise the same principle, it appears that the equity which the Court administers in securing a provision of maintenance for the wife, is founded on the well-known rule of compelling a party who seeks equity, to do equity, and it is not possible to conceive a case more strongly calling for the application of that rule than the present case. The common law gives to the husband the enjoyment of the life estate of the wife, on the ground that he is liable to maintain her, and makes no provision in the event of his failing or becoming unable to perform that duty. If the wife's life estate be attainable by the husband, or the assignee of the husband at law, the severity of the law must prevail; but if it cannot be reached otherwise than by the interposition of the court, equity, though it follows the law, and therefore gives to the husband or his assignee the wife's estate, withholds its assistance till it has secured to the wife the means of subsistence; it refuses to hand over to the assignees of the husband to the exclusion of the wife the income of the property, which the law intended for the maintenance of both. On the same principle the ordinary interposition of this court, which compels a settlement of their property on married women, was originally founded, though the wife is permitted actively to assert her equity as plaintiff; and if such be the principle, what difference can it make when the assignee of the husband is applying to the court for assistance, to obtain the property, that the estate of the wife is not a trust, but the recovery at law is only prevented by the existence of a prior legal estate? It happens, however, that in *Oswell v. Probert* the

<sup>f</sup> 1 P. Wms. 458.<sup>g</sup> 2 Ves. jun. 607.<sup>h</sup> 2 Ves. jun. 680.<sup>i</sup> 3 Bro. C. C. 345.<sup>j</sup> 3 Ves. jun. 166.<sup>k</sup> Id. 421.<sup>l</sup> 9 Ves. 87.<sup>m</sup> 11 Ves. 14.<sup>n</sup> 1 Eq. Abr. 58.

estate of the wife was the same as in this case. (His Lordship having stated that case, said) such being the principle of this court, and such the authorities in favour of the wife, no case has been referred to in support of the decree. It may be thought that the cases of *Walters v. Saunders*,<sup>n</sup> and *Tudor v. Samyne*,<sup>o</sup> are opposed to this rule. It is, however, to be observed that in the former, there had been a decree before the assignment to the husband, and that decree may have been for payment to him. The part of the latter case which applies to the present, is not easily explained, as it appears from the case that the rule of not assisting the husband to the property of the wife, without making provision for the wife, was then (1692) well known. It was, however, founded on the decision of Sir Edward Turner's case,<sup>p</sup> of which Lord Nottingham, in *Pitt v. Hunt*,<sup>q</sup> expressed great surprise, in which surprise Lord Hardwicke, in *Jervson v. Moulson*,<sup>r</sup> seems to have joined, and in which case he says, that the rule that the husband cannot come into this court for the fortune of his wife, is a rule of equity founded on natural justice. I have carefully considered the decisions on this subject, and have given them my best consideration, which I think it right to do, when I have the misfortune to differ from the judge whose decision I am called upon to review, not only from the respect justly due to such decision, but also to afford to the parties, or those who advise them, the means of weighing the value of the judgment I feel called upon to pronounce; but I think it right to guard against the supposition which may be entertained of my thinking this a case of difficulty or doubt. I did not feel any such difficulty or doubt at the time of the arguments, and none has been since suggested by the subsequent consideration I have given to the case. I must reverse the decree of the Vice Chancellor, and refer it to the master to approve of a provision for the maintenance and support of Lady Champneys out of the income of the estate.

*Sturgis v. Champneys*, sittings at Lincoln's Inn, August 2; and at Westminster, November 7, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### INSURANCE.—DEVIATION.

A vessel was insured on a voyage from Liverpool to Sydney and back, with liberty to call and stay for the purposes of the voyage at all and every port and ports, &c. on either side of the Cape, (the Mauritius being expressly mentioned) such calling and staying not to be deemed a deviation. The vessel arrived at the Mauritius in the Spring of 1834, but could get no homeward cargo. After the season was over the master discharged the crew and laid the ship up. At the beginning of the next season he put it

into sailing order, but could get no cargo, and at the end of April 1835 sailed for Europe in ballast. The ship was lost at sea. The jury found that the discharge of the crew was an abandonment of the voyage insured. The Court sustained the verdict, on the ground that if not in itself a deviation, the discharge of the crew was in itself strong evidence to shew that the delay was unnecessary, and that being so, it would amount to a deviation.

This was an action on a policy of insurance effected on the ship Edward Colson. The policy was for a voyage from Liverpool to Hobart Town, Launceston, or any port in Van Dieman's Land; thence to Sydney, in New South Wales; during the stay of the vessel there, and thence back to any port in the United Kingdom; with liberty to touch at any port in Van Dieman's Land, and the Mauritius also, on the outward or homeward voyage, on either side, as well as at the Cape of Good Hope for any purpose whatever. The policy also declared that it should be lawful for the vessel to touch and stay at any ports and places whatever, particularly at the Mauritius, and to take in and discharge goods and passengers, and for any other purpose whatever, without being deemed a deviation and without prejudice to the insurance. The ship was valued at 3,500*l*. It sailed from Liverpool in 1833, and after making some other ports, arrived at the Mauritius, on the homeward voyage in Feb. 1834. It there waited for a cargo, but as none could be obtained, the number of vessels being considerable and the number of freights small, the captain, who had made every exertion to procure a cargo, determined to lay up the ship, which he did, and discharged the crew. In the following Autumn he again exerted himself to procure a cargo, but in vain, and having waited through all the season in the hope of getting his ship employed, he determined on returning home in ballast. He accordingly sailed in March, 1835, was seen and spoken to by the Daphne when out at sea, on the 26th of that month, and was never afterwards heard of. The ship must therefore have gone down at sea. The defendant pleaded, first, that the loss did not occur by the perils of the sea during the continuance of the risk insured against; and secondly, that there had been a deviation. At the trial of the cause before Lord Denman, at the sittings at Guildhall after last Michaelmas Term, the above facts having been proved and left to the consideration of the jury, they retired to consider of their verdict, and when they returned (the Lord Chief Justice having in the mean time left the Court) they gave in a written paper, in which they stated that they found for the defendant on the plea that the discharge of the crew at the Mauritius vitiated the policy. This was afterwards entered as a verdict for the defendant.

Sir W. Follett in this term appeared to move for a rule to shew cause why there should not be a new trial. The question was whether the

<sup>n</sup> 2 Vern. 270.

<sup>p</sup> 1 Vern. 7.

<sup>q</sup> Id. 18.

<sup>r</sup> 2 Atk. 417.

vessel remained a reasonable time at the Mauritius, and, in order properly to decide the question, the jury ought to have taken into their consideration the particular circumstances of the number of vessels at the Mauritius, the small quantity of freight there, and the necessity of the ship staying till it could get a cargo. The jury put in a written paper, stating that they found for the defendant on the plea that the partial discharge of the crew vitiated the policy. That verdict cannot be sustained, for in fact there is no such plea on the record. The only pleas are that the vessel was not lost by the perils of the sea, and that there had been a deviation; on the first plea it was clear that the plaintiff was entitled to a verdict. So he was on the second. The Mauritius was a place into which the vessel had, by the terms of the policy itself, a right to go, and it stayed thereno longer than was necessary, and only for a necessary purpose. Under such circumstances the delay was perfectly justifiable. In *Raine v. Bell*<sup>a</sup> a ship sailed from Spain, being insured from a loading port in Spain to London, and in the course of the voyage it put into Gibraltar for provisions, which could not be obtained before, on account of a scarcity at the ports of loading. While at Gibraltar, the vessel took in some chests of bullion, but as the jury negatived the going into Gibraltar, or the staying there for any purpose but that of taking in necessary provisions, a verdict was found for the plaintiff, and the Court sustained the verdict. In *Harley v. Bruggin*,<sup>b</sup> the vessel lay on the coast of Africa for two months, and the Court of Common Pleas there directed a new trial, with the express view of submitting to the jury the question whether it so stayed for the purpose of trading. That is the question which ought to have been left to the jury in the present case. If the vessel stayed at the Mauritius, as it did, for the purpose of trading, there the stay at a port which was included in the policy, could not be deemed a deviation. The partial discharge of the crew might be a fact for the consideration of the jury in determining the question of reasonable delay, but if the vessel was at the Mauritius for the purposes contemplated at the time the policy was entered into, its stay cannot vitiate the policy. The reasonableness of sending the ship on an intermediate voyage was a question left for the jury in *Ongier v. Jennings*,<sup>c</sup> by Lord Eldon, and that direction was not afterwards disputed. All the cases turn solely on the question whether the ship was employed on purposes different from the voyage. Here the employment was in pursuance of the voyage itself. If the delay is not accounted for, the underwriters are discharged; *Pulmer v. Fenning*,<sup>d</sup> but if it is, and it appears to be a delay in pursuance of the object of the voyage, as it was here, they still continue liable.

*Cur. adv. vult.*

Lord Denman delivered judgment in this

case. This was an action on a policy of insurance on the ship Edward Colson, for a voyage from Liverpool to Sydney and Hobart Town, out and home, with liberty to call and stay for the purposes of the voyage at all and every port and places on either side of the Cape, such calling and staying not to be deemed a deviation. The ship arrived at Sydney and then proceeded to the Mauritius where it arrived in March 1834. It stayed through that year and until the month of April 1835, when finding it impossible to get a cargo it sailed for Europe. On the homeward voyage it was lost. The assured claimed as for a total loss. This claim was resisted on the ground that the delay at the Mauritius was a deviation, and that the assured having in the interval between the Spring seasons of 1834 and 1835, discharged the crew, the voyage insured must be considered to have been abandoned. The jury returned a verdict for the defendant finding that there had been a deviation, the discharge of the crew in their opinion amounting to one. A rule has been moved for to set aside this verdict, but the Court does not see any reason to disturb the verdict, as the evidence appears to be satisfactory. The Court further desires to say, that though the mere discharge of the crew might not be in itself a deviation, it was a strong evidence to shew that the delay was unnecessary, and such delay being unnecessary would already be equivalent to a deviation.

Rule refused.—*Irving v. Barnard*, H. T. 1840.

#### Common Pleas.

##### CORPORATION BYE LAW.—CONSTRUCTION.

The bye law of a corporation must receive a reasonable construction, although its language, taken literally, might appear inconsistent with that construction.

This was an action of debt, and the declaration set out letters patent of 4 Wm. & Mary, incorporating in one company all and singular persons using the trade of poulters, or selling poultry wares, coneyes, butter and eggs within the city of London, or within seven miles thereof, by the name of the "Master, Wardens, and Assistants of the Company of Poulters, London;" by which it was declared, that there should be one master, four wardens, and sixteen assistants of the said company, to be chosen and elected as thereafter mentioned; and that they should have power of making such reasonable laws, acts, orders, ordinances, and constitutions in writing, as to them or the greater part of them, whereof the master and one of the wardens for the time being to be two, should seem fit, good, and convenient, according to their best discretion, touching and concerning the good estate, order, and government of the said company, and of every member thereof; and in what order and manner the said master, wardens and assistants, and all and every person or persons being free of the company within the limits aforesaid, should demean and behave themselves, as well as in all and singular matters, causes and things, touching and concerning

<sup>a</sup> 9 East 185.

<sup>b</sup> Park on Ins. 469.

<sup>c</sup> 1 Comp. 505, n.

<sup>d</sup> 9 Bing. 460; 2 Moore & S. 624.

the said company or anything thereunto appertaining, with power of imposing fines to be recovered by action of debt, &c. The declaration then stated the acceptance of the letters patent by the company and that the said company was afterwards made a Livery Company of the City of London; and went on to aver, that in the year 1692, a certain reasonable ordinance in writing was made at a convocation of the master and wardens, by which it was ordered and established that the master, wardens, and assistants of the said company for the time being, or the greater part of them, from time to time, and at all times thereafter, when and so often as they should think it convenient or find it needful, should and might call, nominate, choose, and admit into the livery or clothing of the said company, such and so many persons being freemen of the said company, as they should think meet, honest, and of ability, to be called and admitted into the said livery; and that every person who should be so called, elected, and chosen into the said livery, and should refuse or deny to be of the same livery, not having any such lawful, just or reasonable cause or excuse for such his refusal and denial, as by the master, &c. should be judged sufficient, should for every time of such his refusal or denial, forfeit and pay to the master, &c. for the time being for the use of the said company, the sum of 10/. The declaration further set out the confirmation of this ordinance, and notice to the defendant of the premises; and that the defendant was on the 6th March, 1828, duly admitted to the freedom of the Poulterer's Company, and was afterwards duly admitted to the freedom of the City of London, and became a freeman of the City of London as a poultreer; and that the defendant so being such freeman, afterwards on the 9th March, 1838, the greater part of the master, wardens, &c., at a court of the company, held at the Guildhall of the city of London, thinking the defendant a meet, honest person, &c., did nominate and call him into the livery and clothing of the said company, and thereof gave notice to the defendant, and required him to attend at a court, to be held by them on 28th June, 1838, at which court they were ready to admit him; but that though he had no good cause or excuse, he refused to attend or be admitted to the livery, whereby an action had accrued to the said master, wardens, &c., to demand and have of and from the defendant the sum of 10/. Breach, non-payment. General demurrer and joinder.

*Mellor* supported the demurrer, and contended that the bye-law set out in the declaration was void, as it purported to extend to all freemen of the company, whereas none can be liverymen who are not also freemen of the city of London. It is admitted that there are many free of the company who are not free of the city. Now a law that imposes on its members the necessity of taking on themselves an office to which they are ineligible is void, much more when the body making that law has not the power of giving such members the qualifica-

tions requisite for taking the office. In *The Master and Wardens of the Innholder's Company v. Gladhill*,<sup>a</sup> which was an action similar to the present, the declaration omitted to allege that the defendant was a freeman of the city of London, as well as a freeman of the particular corporation, and on that ground it was held bad on special demurrer. In this case it is truly averred that the defendant was a freeman of the city of London as well as of the corporation, but that does not establish the validity of the bye-law itself: that averment in its terms shews the bye-law to be bad.

*Barstow, contra* —The bye-law must receive a reasonable construction, and it will not be intended that the company will elect persons to the livery who are not qualified; but the presumption will be the other way. *The Master &c., of the Vintners' Comp. v. Passy*,<sup>b</sup> *City of London v. Vanaker*,<sup>c</sup> *the London Tobacco Pipe Makers' Comp. v. Woodroffe*.<sup>d</sup> In the last of these cases the word "persons" was held to be confined to eligible persons. That case is not to be distinguished from the present. If the defendant was ineligible to the livery in consequence of not being free of the city, that fact should have been pleaded by him.

*Mellor*, in reply.—There the office in question was that of warden of the company, and consequently a corporate office, the qualifications for which were entirely matter for the regulation of the company itself: here, a new qualification is made necessary by a power over which the company have no control. This is not merely a corporate office; by being a liveryman, rights are acquired beyond the scope of the corporation.

#### *Cur. adv. ruli.*

*Tindal, C. J.*—The question turns on the validity of the bye-law set out in the declaration, by which it was ordained that the master, &c., might nominate to the livery such and so many persons, being freemen of the company, as they should think meet, honest, and of ability, and it is objected that the bye-law empowers the company to call in and nominate to the livery other than freemen of the city. It was argued that it is necessary that a person so nominated should be a freeman of the city, as well as of the company; and as the incorporation of this particular company extends to the distance of seven miles beyond the city of London, there may be many who are freemen of this company without being freemen of the city. If the bye-law is to be construed according to the letter, it would certainly, according to the terms of it, extend to persons not being free of the city; and according to the judgment of *Foster, J.*, in *The Master and Wardens of the Innholders' Company v. Gladhill*, might be fairly contended to be void, as including persons not properly eligible to the livery. We think, however, that the bye-law must receive a reasonable construction, and that the persons mentioned in it must be taken to mean persons properly qualified in

<sup>a</sup> Sayer's Rep. 274.

<sup>b</sup> 1 Burr. 240.

<sup>c</sup> Cart. 480.

<sup>d</sup> 7 B. & C. 852

other respects, according to the case of *The London Tobacco-Pipe Maker's Company v. Woodroffe*. We cannot distinguish that case from the present, and our judgment must therefore be for the plaintiff.

Judgment accordingly.—*The Masters, Wardens, &c. of the Poulterers' Company v. Phillips*, H. T. 1840. C. P.

### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

#### Royal Assent.

Brighton Small Debts Court. 23 March.

#### House of Lords.

Copyholds Enfranchisement. Lord Brougham.

[In Select Committee.]

Frivolous Suits Act amendment, touching costs.

[For second reading.] Lord Denman.

Rated Inhabitants Evidence.

[In Committee.]

Vagrants' Removal.

[For third reading.]

Bolton Small Debts Court.

[In Committee.]

For facilitating the Administration of Justice.

[For second reading.] Lord Chancellor.

For the commutation of Manorial Rights.

[For second reading.] Lord Redesdale.

For defining the powers of the Metropolitan Police Justices.

[In Committee. See p. 420, ante.]

Marquis of Norimunby.

For giving Summary Protection to the publication of Parliamentary Papers.

[For second reading.]

#### House of Commons.

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

To extend the Term of Copyright in Designs of woven Fabrics. Mr. E. Tenant.

[In Committee.]

To carry into effect the Recommendation of the Ecclesiastical Commissioners.

Lord J. Russell.

To extend Freemen and Burgesses' Right of Election. Mr. F. Kelly.

Drainage of Lands. Mr. Handley.

[In Committee.]

To amend Tithes Commutation Act.

[Passed.] Sir. E. Knatchbull.

Small Debt Courts for

Aston, Tavistock,  
Barkston Ash, Newton Abbott,  
Liverpool, Wakefield Manor.  
Marylebone.

Summary Conviction of Juvenile Offenders.

[In Committee.] Sir E. Wilmot.

To amend the County Constabulary Act.

Mr. F. Maule.

To amend the Laws of Turnpike Trusts, and to allow Unions. Mr. Mackinnon.

Prisons Act Amendment.

[In Committee.]

To consolidate and amend the Law of Sewers.

[In Committee.]

To give Summary Protection to persons employed in the publication of Parliamentary Papers. [Passed.] Lord J. Russell.

To improve the High Court of Admiralty.

#### PARLIAMENTARY PRIVILEGE.

The following clause has been added to the Bill for giving Summary Protection to the publication of Parliamentary Papers:

That in every such civil proceeding, within forty-eight hours after the delivery of such certificate and affidavit, the defendant shall cause a notice in writing to be delivered at the residence, office, or lodgings of the plaintiff or of the attorney of the plaintiff, as the case may be, indorsed on the writ, in which notice it shall be stated that such proceeding is stayed pursuant to this act.

#### EASTER TERM EXAMINATION.

As the term ends on Wednesday the 13th May, the earliest day on which the examination can take place will be Monday the 4th May. It will probably take place on Tuesday the 5th.

The number of applications included in the printed list for next term is 162; but deducting the names of those already examined and passed, and several who have omitted to give notice of examination, we understand the number of candidates at present is 133. Probably a few more may be added by leave of the Court or a Judge.

There seems, therefore, to be no falling off in this branch of the profession.

#### THE EDITOR'S LETTER BOX.

The letters on Powers coupled with Interest, and on the proposed Articled Clerks' Club shall be attended to.

We think the letter of W. F. is not so judicious as we could have wished it to be, and it would be premature to publish it till the House of Lords has come to a decision.

"A Constant Reader" should make some search himself into the question he states, before calling on other correspondents.

Has not the point on the 33d section of the Wills Act been sufficiently discussed? We will, however, consider the further letter which we have received.

The same remark applies to the subject of Powers of Appointment in Purchase Deeds.

The question on the power of Coroners to compel Attorneys to serve as Jurymen on Inquests shall be noticed.

Letters for the editor of this work should be addressed to the office, No. 67, Chancery Lane.

# The Legal Observer.

MONTHLY RECORD FOR MARCH, 1840.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## REMOVAL OF THE COURTS FROM WESTMINSTER.

We lately noticed an able pamphlet in favour of the removal of the Courts from Westminster Hall to the neighbourhood of the Inns of Court, (see p. 341, *ante*). The subject appears to excite considerable attention at the present time, and we have heard from various sources that some active measures are in progress for bringing the question before Parliament.

Having in our former article stated the arguments in favour of the removal, we now proceed to lay before our readers the *objections* thereto, and the answers which the Author of the pamphlet has given:—

“The *objections* which have been made to the removal of the Courts of Law from Westminster, hitherto put forward, were alluded to in the debate in the House of Commons on the 9th of February, 1836, on Mr. Hume’s motion, “That the Building Committee of the new Houses of Parliament might be instructed to reconsider the fitness of the intended site.” On that occasion, the separation of the Houses of Parliament from the Courts of Law was incidentally touched on, and the following passages, referring to the subject, are quoted from the *Mirror of Parliament*:—

“9th February, 1836.—Mr. Hume.—‘I do not go so far as to say, that the neighbourhood of the law Courts is bad, but I am free to confess, that I would rather be at a distance from them. I know it is held by many, that the situation is convenient for those lawyers who have to attend the house; but looking at the small number of those gentlemen, compared with the other members of the house, I do not think that their convenience ought to weigh much, if there are other circumstances to counterbalance it. I may be accused of wishing to effect a radical change in this respect, because I would remove the courts of law al-

together from their present inconvenient situation. I would send them to Lincoln’s Inn Fields, into the immediate neighbourhood of the lawyers. Let them be altogether. This would be more convenient to the public, and more convenient in every respect to the lawyers themselves. I have scarcely ever visited any courts of justice arranged so inconveniently, or with so little accommodation, as our present courts; and although a great deal of money has been expended in fitting them up, I do not think that any loss would be sustained, but that, on the contrary, great public convenience would be obtained, by getting rid of them altogether. Judges and lawyers are very proper persons to carry into effect the acts of the legislature, but they have no necessary connexion with the proceedings of this house; they are altogether distinct.’

“Sir Frederick Pollock.—‘With regard to those members of the profession to which I have the honour to belong, and who are also members of this house, I apprehend it is a matter of indifference to them, whether the House of Commons be situated in the vicinity of Westminster Hall, St. James’s Palace, or Charing Cross. Even supposing the removal of the Houses of Parliament might occasion inconvenience to the members of my profession, I am quite sure that not one of them would be found to let any personal consideration of that sort prevail against what might be considered the general convenience of the members of the Houses of Parliament. I repeat, however, that the site of the Houses of Parliament is a matter of perfect indifference to the gentlemen of the bar. It is undoubtedly true that the Courts of Law sit a certain portion of the year in Westminster Hall; but it is also true that the Courts of Equity sit a much longer time in Lincoln’s Inn, as also does the Court which I chiefly attend, at the Guildhall, in the City of London, or in its immediate neighbourhood. For my own part, I should care little whether, after my hours of business, I went from Guildhall to Westminster, or to Pall Mall. But there is a class of persons

belonging to the legal profession,—I mean the solicitors and attorneys,—and a portion of the public connected with the administration of justice, to whom I believe the proximity of the Houses of Parliament to the place where justice is administered, is of the greatest importance at the time when the House of Lords is sitting as a Court of Appeal, and when committees of the House of Commons are engaged on business which requires the assistance of gentlemen of the bar. Because if the Houses of Parliament were to be removed from the place where justice is administered, and where the members of the bar congregate together, it would be impossible for solicitors, engaged in parliamentary business, to obtain that assistance and advocacy which they might desire, or the House require, without putting their clients to a very great expense. Either the business would remain for a length of time unsettled, or be done indifferently. I do, therefore, think it would be a matter of great inconvenience for those who might have business to transact with the House of Lords, or the Committees of either House of Parliament, if there were such an entire removal of those Houses, as I should look upon their removal to St. James's Palace, or the back of the Mews to be. It is not for any personal interest of my own, or that of any member in this House belonging to the same profession, that I have thought it necessary to make these few observations, but for the benefit of those connected with it who are absent, and such portion of the public as would be affected by the proposed changes.'

"Sir Robert Peel.—'I entirely agree, that if all other things were nearly balanced, historical recollections ought to be considered of some importance. \* \* \* It is also of some importance that the Houses of Parliament should be in the neighbourhood of the Law Courts, where the judges are accustomed to sit, and where those counsel and other gentlemen in the legal profession, by whom the parliamentary and other business is usually transacted, are in the habit of attending; for the near vicinity gives the house the command of the services and assistance of the first men of the profession. This is important, especially after a general election, and I much doubt whether we should retain this advantage if the Courts were removed to any distance from us.'

"The reasons, then, for the present site are—

"1. That those members of parliament who are at the bar find it convenient.

"2. That the contiguity of the judges and the bar to the Houses of Parliament affords assistance to the Houses and to solicitors, which they would not otherwise receive.

"1. As to the first point, Mr. Hume's answer, that the personal convenience of those members of parliament who practise at the bar, and who are very few in number, ought not to govern a public question like the present, and the disclaimer on their behalf by Sir Frederick Pollock, of any desire to have their convenience considered, to which there

is no doubt they will all cordially subscribe, are all we need notice on this head.

"2. It is in no way necessary to the public service, that the judges should sit in the neighbourhood of parliament. It is but rarely, and on solemn occasions, that they are called upon to advise the House of Lords; and with the House of Commons they have no connexion. The force of the second objection, then, is this: that the House of Lords, and the committees of both Houses, can at present be attended by barristers, with more convenience to the Houses, and at less expense to the public, than if the Courts and parliament were separated. But let the extent of this convenience be clearly understood. Parliament generally sits from the beginning of February till the middle of August, about twenty-six weeks, or one hundred and eighty-two days; but out of this time the equity bar is at Westminster only forty-four days, and the common-law bar, at the most, eighty days; which latter number, as it includes the first fortnight in February, during which, in general, there is no parliamentary business calling for the services of the bar, may be reduced to sixty-six days.—Thus, Parliament only enjoys this supposed convenience for about one-third of the session, and it cannot be said it experiences any want of professional assistance during the remaining two-thirds of the session.

"But Sir Frederick Pollock considers it would be impossible for solicitors, in case of a separation of the houses and the Courts, to obtain the assistance of the bar, 'without putting their clients to a very great expense.' His meaning is, that the bar would not attend the Houses of Parliament without higher fees than they receive at present. Counsel's parliamentary fees, as is well known, are regulated on a very handsome scale—they are more than double the ordinary Court fees; and, in addition to these, they receive a special fee of ten guineas for each attendance. Now, let it be observed, (for it seems to be an entire answer to the doubt thrown out by Sir Frederick Pollock), that *precisely the same fees are paid* whether the Courts are sitting at Westminster or elsewhere, and counsel willingly attend, on these terms, from Guildhall and from Lincoln's Inn, and even refrain from going circuit to hold parliamentary briefs. In truth, the business being very easy, very agreeable, and being considered by the bar very lucrative, there is much inducement for them to accept it. The most serviceable and most successful parliamentary advocates are those who devote themselves, chiefly or entirely, to that kind of business; and it is more advantageous to the public, as well as more convenient to the committees, to have the attendance of gentlemen of experience in parliamentary practice and precedent; hence the leaders may almost be said to form at the present time a distinct bar, and the casual practitioners are mostly juniors, whose numbers will be found to be quite inconsiderable. The business of the committees being of a continuous nature, unlike the brief and varying subject-matters of the law Courts,

the leaders in full Courts practice are seldom found there—they could not afford the detention from day to day, unless they accepted additional business of the same kind, in which case they abundantly compensate themselves for the sacrifice of their ordinary occupations, and assume for a time the character of parliamentary advocates.

But the whole objection has been disposed of, by having shewn that the bar, when attending parliament, receive and are content with the same remuneration wherever their Courts may be sitting; and the practice is the same upon appeals in the House of Lords. Thus it would appear, that the apprehension of any want of attendance on the part of the bar, or any additional cost to the public from the removal of the Courts, is altogether unfounded; but were it otherwise, the parliamentary business of appeals and private bills, employing, as it does, only a few professional persons, and not calling for so strict an economy in the transaction of its detail, cannot bear comparison in importance with the general administration of the law by the superior Courts, engaging the services of the vast body of the profession, and demanding every possible abridgment of time and expense.

And let it not be supposed that the solicitors and attorneys are opposed to the removal of the Courts. The *prima facie* inference, drawn from the residence of the majority of their body in the law district, is affirmed by the fact, that the committee of the "Incorporated Attorneys of England and Wales," some few years back, under less favourable circumstances than the present, made an attempt to effect that object, and the announcement to the annual meeting of their members of the difficulties they had met with, was received with general expressions of regret. At the same time, it is true that no men are so patient under inconveniences, so little disposed to improve, or so little accustomed to combine, as lawyers; but the present is a case in which their own comfort and their clients' interests call upon them for exertion.

The writer of this statement of "Facts for the consideration of Parliament," thus concludes :

"It has thus been shown that the site of Westminster Hall, adopted originally without view to the convenience of suitors, has become prejudicial in many respects; that it occasions to the legal professions a needless sacrifice of time, expense, and personal comfort; that thence arise daily and hourly hindrances in the administration of justice during a large portion of the year; that the evil and the cost of these delays fall upon the suitors; and that the uncentral position of Westminster Hall imposes an additional charge and inconvenience on the public: that these disadvantages, unavoidably incident to Westminster Hall, are not compensated in regard to the business of its own Courts, by any one convenience of a *publice nature*, and that the facilities which parliamentary business is supposed to derive

from the present situation of the Courts, and on account of which the site in question is defended, are, as far as public interests are concerned, comparatively unimportant; and as the objection is founded on the policy of placing the Courts in that *neighbourhood or proximity most convenient to the public interests*, the principle is one which, coming in aid of the argument here adduced, or rather being itself the ground of that argument, must engage all who feels its force, in favour of the removal of the Courts to the law district of the town. The site it is proposed to substitute has been shown to possess in a remarkable degree all those advantages in which Westminster Hall is deficient. It has been also shown that the necessity which has now arisen of providing new Courts, and better accommodation for the increased and still increasing demands of the suitors, and of expending a large sum in effecting that object, affords an opportunity of deliberating on the wisdom of retaining the Courts in a situation to which such insurmountable objections belong. This question must ere long be considered; and if a spirit of prudent and long-sighted economy be brought to the discussion, if the ground on which the question is met be that of the practical usefulness of our Courts, if the end in view be the gaining for the law the respect and attachment of the people, there is no doubt of the result.

"Those who, admitting all the inconveniences of Westminster Hall, would dwell on the associations connected with it, will have seen that Sir Robert Peel, in the remarks above quoted, places the importance of regarding "historical recollections" under the condition, "if all other things are nearly balanced." The "recollections" of St. Stephen's have a general interest, that will endure as long as England is a nation, and they will have a noble monument in the new Houses of Parliament. Westminster Hall, too, will receive its due honour; and whilst, as a matter of history, the political subserviency of its Judges to the Crown in times past cannot be dissociated with it, it will still perpetuate the memory of the triumphs of the law in the vindication of constitutional liberty; but its merely *legal* associations, whatever interest professional men may take in them, are not bound up with the feelings of the people, or the sanctions of the law; to neither, therefore, will any violence be done by the better adjustment of the machinery of the law in the manner here recommended. The imposing concentration exhibited by the superior Courts of judicature being assembled in one grand structure,—in the centre of the metropolis,—contiguous to the Inns of Court, as venerable in their age, and legal associations as Westminster Hall itself,—surrounded by the legal professions, and by the *officinæ* of the law,—would seem by its unity, and by its distinctness from the legislative body, to form a visible expression of the supremacy and power of the established law, well suited to aid an effective administration of justice in rearing up and

strengthening in the public mind that reverence for the law, and that spirit of obedience to its decrees, which are the best safeguard of the throne and the liberties of the people."

Amongst other measures for promoting the object in view, we learn that a petition has been prepared by some of the leading solicitors in London, and will be soon ready for signature. The example will, no doubt, be followed by the country solicitors who, when in town, are equally interested in the measure with the London profession, and through their agents, are constantly affected by the present inconvenient locality of the Courts.

The intended petition states—

That for many years past it has been generally felt that the Courts of Law and Equity in Westminster Hall are most inconveniently situated for the practitioners, suitors and witnesses, by reason of their being at a great distance from the Inns of Court and Law Offices, and from the residence of a very large proportion of the persons having occasion to resort thereto.

That the several Inns of Court and the whole of the Law and Equity Offices, the Chambers of the Judges and Masters in Chancery, as well as of the gentlemen of the Bar, and of a great majority of the London attorneys, and of the agents for the country attorneys, are in the immediate neighbourhood of Chancery Lane,—a central and most convenient part of the metropolis.

That in that neighbourhood, professional men resident or having offices in the different other parts of the metropolis, are brought into daily communication with each other in transactions of business in the Courts of Equity and in the public offices of those Courts as well as of the Courts of Law, and in the Hall of the Incorporated Law Society, and in consequence of the distance of the Courts at Westminster from thence, unavoidable delays and increased expence are occasioned to suitors and others.

That as the business of the Court and of the Law Offices in London is not confined to transactions within the metropolis, but comprises matters originating in all parts of the kingdom, the inconvenience arising from the distance of the Courts at Westminster from the neighbourhood in which the Chambers of the Judges and Masters in Chancery and the Law Offices generally are centered, affects indiscriminately both town and country suitors, and the country solicitors when in town, as much as the London practitioner.

That the business of the Courts under these disadvantages is done less efficiently and with less dispatch and economy than it might be, and the distance of Westminster Hall from the City and other parts of the metropolis occasions a very serious loss of time to that portion of the public who have to attend there as parties and witnesses.

That the continuance of the Courts at Westminster is not required by any public necessity, nor are the inconveniences attendant on their being there compensated by any advantage of a public nature.

That the present Courts there are insufficient in number, inconvenient in construction, and none of them have sufficient accommodation to enable the Judges, counsel, attorneys, and officers to transact the important business in which they are daily occupied with due facility and dispatch.

That the increased business of the Courts and the demand for fit accommodation require much more space than the present site of those at Westminster affords, and that any extension of it could only be effected by a very large outlay, which if made would tend to perpetuate the evils of situation complained of.

That these circumstances render it most desirable that the Courts should be removed from Westminster to the neighbourhood of the Inns of Court, and that the present necessity for additional Equity Courts presents a favourable opportunity for carrying this measure into effect.

That the great advantage of having the Courts concentrated is exemplified in the instance of the Courts of Law and Equity in Dublin, which are contiguous to each other.

That the destruction by fire of both Houses of Parliament and the offices belonging thereto, having rendered it necessary to rebuild them, great advantage will arise by appropriating the present Courts to the purposes of Parliamentary Committee Rooms, and accommodation for witnesses and agents attending there.

That either the garden of Lincoln's Inn Fields or a part of Lincoln's Inn, or the Rolls House, Garden, and Estates in Chancery Lane, offer a central situation almost equally distant from all parts of the metropolis, in the neighbourhood of all the Inns of Court and Law Offices, and, as such, especially suitable for the erection of the new Courts.

On this subject we add the following letter from a correspondent :

*To The Editor of the Legal Observer.*

Sir,

I have just read the able pamphlet advocating the removal of the Courts of Law from Westminster Hall to a more convenient site, to which you have called the attention of the profession in a late No. of the Legal Observer, pp. 341—3. I quite agree with the writer in his remark "that no men are so patient under inconveniences, so little disposed to improve, or so little accustomed to combine, as lawyers;" but surely on a subject in which we are all so deeply interested, we ought for once heartily to unite, and to petition Parliament "while an opportunity is afforded of doing so with any chance of success, and before the present site is finally determined on."

There cannot surely be any difference of opinion amongst one branch of the profession, (whatever doubts some few leading members

of the Bar may have) as to the desirableness of erecting the new Courts in Lincoln's Inn Fields. Will you stir us up again in one of your next Numbers? and if, through your assistance, the Law Society<sup>a</sup> can but be prevailed on to take up the matter with becoming spirit, we may yet hope that the grievous loss of time and multiplied inconveniences which result from the present situation of the Law Courts will not be perpetuated on us and our successors.

If any of your readers have any doubt on the subject, let them only weigh the facts adduced by the writer of this pamphlet, and they cannot fail to be convinced that this is a question which vitally affects the interests, not only of the profession, but of the public at large.

J. H. W.

P.S. What do you think of a public meeting of the profession being called to consider what steps should be taken?

## APPEALS FROM THE LORD CHANCELLOR'S JUDGMENTS.

NUMBER of judgments given by the Lord Chancellor which were *appealed* to the House of Lords, distinguishing those *affirmed* from those *reversed*.

1831—2. Appeals 10.	1835.—Appeals 5.
Affirmed . . . 8	Affirmed . . . 2
Withdrawn . . . 1	Reversed . . . 1
Not prosecuted 1	Dismissed . . . 2

1833.—Appeals 6.	1836.—Appeals 2.
Affirmed . . . 1	Affirmed . . . 2
Reversed . . . 1	
in part 2	1837 } Nil.
Withdrawn . . . 1	1838 }
Not prosecuted 1	

1834.—Appeals 5.	1839.—Appeal 1.
Affirmed . . . 3	No judgment yet 1
Reversed in part 1	—
No judgment . 1	

## EMOLUMENTS OF SIX CLERKS IN CHANCERY.

The following return of all profits, fees, and emoluments is set forth by *Francis Vesey*, Esq. one of the six clerks and clerks of inrolments of the Queen's High Court of Chancery, for the years 1838 and 1839; as also the amount of his receipts, from 10th of October 1838 to 10th October 1839, as surveyor or clerk

<sup>a</sup> The Law Society petitioned Parliament on this subject in the year 1836, soon after the destruction of the buildings by fire, and we are informed that the matter is again under consideration. Ed.

comptroller of her Majesty's Hanaper, which being a responsible and accountable duty, is held in rotation and successively by the now existing five clerks (better known by the ancient title of the Six Clerks), consistent with the patent by which they hold the same, viz. to them and their survivors and successors for ever.

This return of all profits, &c. it is proper to observe, is made after deducting his proportional sixth share of the payment of a heavy land tax of 198*l.* per annum, salaries to clerks, expences attending the internal domestic arrangement of the office, such as porter, house-keeper, coals, candles, and other outgoings, as also of stationery required in their own immediate departments.

That by an act of 1 & 2 Will. 4, establishing a Court in Bankruptcy, and which to a certain extent invaded the patent rights of the clerk comptroller or surveyor of the hanaper, compensation under that act was awarded to each six clerk for life, of 52*l.* per annum, by the certificate of the Lords of the Treasury, dated 24th January 1843.

1838. £. s. d.

Received his proportion of fees as one of the Six Clerks .....	1,025	0	0
Ditto, as one of the Clerks of the Inrolments .....	545	0	0
Compensation under Act of 1 & 2 Will. 4, referred to as above..	52	0	0
<hr/>			
	£1,622	0	0

1839.

As surveyor or clerk comptroller of her Majesty's Hanaper, being his rotation year, out of which is to be deducted ex- penses of parchment, ingross- ing and inrolling of patents, &c. &c. say 145 <i>l.</i> .....	636	18	8
	145	0	0
<hr/>			
	£491	18	8

Received his proportion of fees as one of the six clerks .....	1,122	10	0
Ditto, as one of the Clerks of Inrolments .....	527	10	0
Compensation under act of 1 & 2 Will. 4, referred to as above..	52	0	0
<hr/>			
	£1,702	0	0

13 February 1840. FRANCIS VESSEY.

The following return of all profits, fees, and emoluments, is set forth by *William Turton*, Esq. one of the Six Clerks and Clerks of Inrolments of the Queen's High Court of Chancery, for the years 1838 and 1839; as also the amount of his receipts from 10th of October 1837 to 10th October 1838, as surveyor or clerk comptroller of her Majesty's Hanaper, which being a responsible and accountable duty, is held in rotation and successively by the now existing five clerks (better known by

the ancient title of Six Clerks), consistent with the patent by which they hold the same: viz. to them and their survivors and successors for ever.

This return of all profits, &c. it is proper to observe, is made after deducting his proportional sixth share of the payment of a heavy land tax of 198*l.* per annum, salaries to clerks, expenses attending the internal domestic arrangement of the office, such as porter, house-keeper, coals, candles, and other outgoings, as also of stationery required in their own immediate department.

That by an act of 1 & 2 Will. 4, establishing a Court in Bankruptcy, and which to a certain extent invaded the patent rights of the Clerk Comptroller or Surveyor of the Hanaper, compensation under that act was awarded to each Six Clerk for life, of 52*l.* per annum, by the certificate of the Lords of the Treasury, dated 24th January 1833.

1838: £ s. d.

Received his proportion of fees as one of the Six Clerks.....	1,025	0	0
Ditto, as one of the Clerks of the Inrolments .....	545	0	0
Compensation under act of 1 & 2 W. 4, referred to as above..	52	0	0
	<hr/>	<hr/>	<hr/>
	£1,622	0	0

As surveyor or clerk comptroller of Her Majesty's Hanaper, being his rotation year, out of which is to be deducted ex- penses of parchment, ingros- sing and inrolling of patents, &c. &c. say 160 <i>l.</i> .....	736	1	8
	160	0	0
	<hr/>	<hr/>	<hr/>
	£576	1	8

1839:

Received his proportion of fees as one of the Six Clerks....	1,122	10	0
Ditto, as one of the Clerks of the Inrolments .....	527	10	0
Compensation under act of 1 & 2 W. 4, referred to as above....	52	0	0
	<hr/>	<hr/>	<hr/>
	£1,702	0	0

13 February 1840.

W. TURTON.

The following return of all profits, fees, and emoluments is set forth by *Edward Vernon Utterson*, Esq. one of the Six Clerks and Clerks of Inrolments of the Queen's High Court of Chancery, for the years 1838 and 1839.

This return of all profits, &c. it is proper to observe, is made after deducting his proportional sixth share of the payment of a heavy land-tax of 198*l.* per annum, salaries to clerks, expenses attending the internal domestic arrangement of the office, such as porter, house-keeper, coals, candles, and other outgoings,

as also of stationery required in their own immediate departments.

That by an act of 1 & 2 W. 4, establishing an Court in Bankruptcy, and which to a certain extent invaded the patent rights of the Clerk Comptroller or Surveyor of the Hanaper, compensation under that act was awarded to each Six Clerk for life, of 52*l.* per annum, by the certificate of the Lords of the Treasury, dated 24th January 1833.

1838: £ s. d.

Received his proportion of fees as one of the Six Clerks.....	1,622	0	0
Ditto, as one of the Clerks of the Inrolments .....	545	0	0
Compensation under act of 1 & 2 W. 4, referred to as above....	52	0	0
	<hr/>	<hr/>	<hr/>
	£1,622	0	0

1839:

Received his proportion of fees as one of the Six Clerks.....	1,122	10	0
Ditto, as one of the Clerks of the Inrolments .....	527	10	0
Compensation under act of 1 & 2 W. 4, referred to as above....	52	0	0
	<hr/>	<hr/>	<hr/>
	£1,702	0	0

I beg to state also, that as one of such Six Clerks, I claim to be entitled, in rotation, to the fees as Clerk Comptroller of the Hanaper, as more particularly stated in the returns of Mr. Vesey and Mr. Turner, to which I beg to refer.

13 February 1840.

EDW. V. UTTERSON.

A similar return of all profits, fees, and emoluments is set forth by *Lancelot Bough Allen*, Esq. one of the Six Clerks and Clerks of Inrolments of the Queen's High Court of Chancery, for the years 1838 and 1839.\*

A similar return of all profits, fees, and emoluments is also set forth by *Henry Garter*, Esq. one of the Six Clerks and Clerks of Inrolments of the Queen's High Court of Chancery, for the years 1838 and 1839.

The surviving Six Clerks in Chancery respectfully state, that by the act of 3 & 4 W. 4, c. 94, for the regulation of proceedings, &c. in Chancery (see s. 28), the fees and emoluments of the deceased Six Clerk, *Richard Pollen*, Esq. are accounted for and paid on oath, to the credit of the Accountant-General, to an account entitled "The Suitors' Fee Fund Account."

\* The fees and emoluments as Surveyor or Clerk Comptroller of the Hanaper coming to each Six Clerk in rotation amount to about 500*l.* for the whole, or averaging 100*l.* a-year each. ED.

## WARRENTS ISSUED FOR TAXING COSTS IN CHANCERY.

RETURNS of the number of warrants on leaving bills of costs, and the number of warrants for taxing bills of costs, issued by each of the Masters of the High Court of Chancery during the years 1838 and 1839.

### I.

#### Return of John Edmund Dowdeswell, Esq.

1838.

Warrants on leaving bills of costs ....	630
Warrants for taxing bills of costs ....	1,343

1839.

Number of warrants on leaving bills of costs .....	723
Number of warrants for taxing bills of costs .....	1,381

7th February, 1840. *J. E. Dowdeswell.*

### II.

#### Return of William Wingfield, Esq.

1838.

Number of warrants on leaving bills of costs .....	501
Number of warrants for taxing bills of costs .....	1,089

1839.

Number of warrants on leaving bills of costs .....	527
Number of warrants for taxing bills of costs .....	1,093

12th February, 1840. *W. Wingfield.*

### III.

#### Return of James William Farrer, Esq.

1838.

Warrants on leaving bills of costs ....	179
Warrants for taxing bills of costs ....	562

1839.

Warrants on leaving bills of costs ....	192
Warrants for taxing bills of costs ....	619

*J. W. Farrer.*

### IV.

#### Return of Sir Giffin Wilson, Knt.

The number of warrants issued between the 1st day of January and the 31st day of December 1838 on leaving bills of costs .....

525

The like between the 1st day of January and the 31st day of December 1839 .....

473

The number of warrants issued between the 1st day of January and the 31st day of December 1838 on taxing bills of costs .....

792

The like between the 1st day of January and the 31st day of December 1839 .....

611

11th February, 1840. *Giffin Wilson.*

### V.

#### Return of the Right Honourable Robert Lord Henley.

1838.

Warrants on leaving bills of costs ....	765
Warrants for taxing bills of costs ....	1,336

1839.

Warrants on leaving bills of costs ....	727
Warrants for taxing bills of costs ....	1,298

11th February, 1840. *Henley.*

### VI.

#### Return of Sir William Horne.

Warrants issued by *Henry Martin*, Esq. late one of the Masters of the Court of Chancery, during the year 1838.

Number of warrants on leaving bills of costs .....	585
--	-----

Number of warrants for taxing bills of costs .....	1,057
--	-------

Warrants issued by *Henry Martin*, Esq. and *Sir William Horne*, during the year 1839.

Number of warrants on leaving bills of costs .....	603
--	-----

Number of warrants for taxing bills of costs .....	1,230
--	-------

11th February, 1840. *William Horne.*

### VII.

#### Return of William Brougham, Esq.

1838.

Warrants on leaving bills of costs ....	598
Warrants for taxing bills of costs ....	988

1839.

Warrants on leaving bills of costs ....	564
Warrants for taxing bills of costs ....	1,123

11th February, 1840. *W. Brougham.*

### VIII.

#### Return of Andrew Henry Lynch, Esq.

From 27th February 1838 (the day the first warrant was issued by him after his appointment,) to the 31st Dec. 1838, both inclusive.

Warrants on leaving bills of costs ....	727
Warrants for taxing bills of costs ....	1,142

1839.

Warrants on leaving bills of costs ....	878
Warrants for taxing bills of costs ....	1,700

7th February, 1840. *A. H. Lynch.*

### IX.

#### Return of Nassau William Senior, Esq.

1838.

Warrants on leaving bills of costs ....	579
Warrants for taxing bills of costs ....	1,055

1839.

Warrants on leaving bills of costs ....	677
Warrants for taxing bills of costs ....	1,354

7th February, 1840. *Nassau W. Senior.*

### X.

#### Return of Samuel Duckworth, Esq.

1838.

Number of warrants on leaving bills of costs .....	460
--	-----

Number of warrants for taxing bills of costs .....	864
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1839.

Number of warrants on leaving bills of costs .....	444
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Number of warrants for taxing bills of costs .....	727
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7th February, 1840. *S. Duckworth.*

## REGISTRARS OF DEEDS, MIDDLESEX.

### A RETURN FROM THE REGISTER'S OFFICE FOR THE COUNTY OF MIDDLESEX.

Amount of fees received by the registrars, showing the deductions on account of the office expenses, and the balance paid to them as remuneration in each year, between the years 1824 and 1840.

Year.	Total Amount of Fees.	Deduction for Expenses.	Balance Re- ceived by Registers.		
			s.	£.	d.
1825	4,441 9 0	1,119 0 0	3,322 9 0		
1826	3,804 11 0	1,159 13 6	2,644 17 6		
1827	3,602 8 0	1,083 10 0	2,518 18 0		
1828	3,752 1 0	1,153 11 0	2,598 10 0		
1829	3,504 8 0	1,020 2 0	2,484 6 0		
1830	3,166 4 0	927 18 0	2,238 6 0		
1831	2,785 16 0	885 6 0	1,900 10 0		
1832	2,755 3 0	837 8 10	1,917 14 0		
1833	2,585 14 0	788 10 0	1,797 4 0		
1834	2,848 12 0	825 11 10	2,023 0 0		
1835	2,845 13 0	816 1 0	2,029 12 0		
1836	2,831 16 0	801 15 0	2,030 1 0		
1837	3,020 19 0	855 19 6	2,164 19 6		
1838	2,964 9 0	857 4 1	2,107 4 11		
1839	2,690 10 0	831 5 4	1,859 4 7		

The above sums charged as expences include rent, taxes, repairs, clerks' salaries, and copying of memorials, preparing the alphabetical indexes and books of reference.

The balance on account of fees is divided in equal proportions among the four registers, out of which each has to pay his deputy a sum for salary, varying, according to a private understanding between them, averaging 50/- a-year for the deputation from each register.

The charges or fees demanded and received for memorials (except from a few solicitors) of the length of seven folios or 500 words, is 7s.; and beyond that length, 6d. for every additional 100 words, as the act of 7 Queen Anne directs.

The authority for such charge was an arrangement between the registers and attorneys of the time; the same being considered a correct charge for the average memorials brought to the office, and was adopted to prevent the delay necessarily occasioned by the having to count the number of words contained in every memorial.

This system has existed from the year 1768, a period of 72 years, and is still in force.

The highest fees demanded and taken in each year for any one memorial, between the years 1824 and 1840, are as under:—

	£. s. d.
1825, January 14 . . . . .	3 7 0
1826, October 10 . . . . .	10 17 0
1827, August 14 . . . . .	3 14 0
1828, December 9 . . . . .	5 3 0
1829, May 26 . . . . .	4 4 0
1830, April 3 . . . . .	3 2 0
1831, June 3 . . . . .	2 10 0
1832, June 28 . . . . .	3 12 0

	£. s. d.
1833, March 13 . . . . .	6 11 0
1834, February 25 . . . . .	6 14 6
1835, June 2 . . . . .	4 16 0
1836, March 14 . . . . .	3 12 0
1837, November 24 . . . . .	6 14 0
1838, May 16 . . . . .	3 8 0
1839, April 25 . . . . .	2 19 0

Each of the above sums, if the act of Queen Anne had been strictly complied with, would be reduced 2s. 6d.

The number of days on which the register's office was closed to the public on account of holidays between 1824 and 1840 was as follows:

1825	39 days
1826	35
1827	37
1828	31
1829	30
1830	31
1831	30
1832	30
1833	28
1834	25
1835	21
1836	22
1837	22
1838	17
1839	19

The holidays kept previous to the above-mentioned years were, in each year, 64 days.

The hours of public attendance are from ten to three on each day by the clerks. The register's or deputy's attendance is from eleven to one, except on Mondays; but the office is open on this day likewise for the general purposes of business, only that parties cannot be sworn as to the due execution of the memorials and the deeds to which they refer, as this can only be effected whilst a register or deputy is sitting.

This alteration took effect from the commencement of the present year 1840 only, and solely with the view of accommodation to the solicitors attending the office, and apparently, except to a few captious parties, gives general satisfaction, the days of non-attendance of the register being now defined instead of uncertain as heretofore.

On the establishment of the office the hours of public attendance were from nine to two and from three to five, but were altered to the present hours, upon a requisition to the then registers of all the influential solicitors, in the year 1789, to suit the convenience of the latter, and no subsequent alteration has taken place, except as before stated, with reference to the attendance of the registers or their deputy.

The registers have been accustomed at different times to perform the duties required of them by the act of 7 Anne, and have invariably attended, one or other of them, to examine and audit the quarterly accounts.

The rate of fees actually demanded and taken for the registry of deeds in the years 1822, 1823, and 1824, was precisely the same as at present and as before stated, and under the like authority.

The number of deeds left at the register's

office during the months of November and December 1839 was 1,077; these deeds were ready for delivery in about sixteen days from their being left for registry, and were after that time, upon application, returned to the persons leaving same, with the exception of those of which the memorials required correction, the number considerable.

There are at present undelivered of the deeds left in the above mentioned months 64, for want of application for same.

The memorials were entered in the day-book on the day of their being deposited, and in the alphabetical index within about fourteen days from the same period. Both of these books are daily open to the inspection of the public between the hours of ten and three o'clock, upon the payment of 1s. daily.

*John Rigge, Deputy Register.*

17 March 1840.

### ACCOUNTS OF THE COURT OF BANKRUPTCY.

A Statement of the amount transferred and paid out as Dividends; of the amount paid by Orders of Court, and of the Judges, from 31st December 1838, to 1st January, 1840;—also showing the Unappropriated Balance existing on the following accounts, and standing to the credit of *Basil Montagu, Esq., Accountant in Bankruptcy*, on 1st January 1840; viz. 1st, The Bankruptcy Fund Account; 2d, The Interest arising from Bankruptcy Fund Account; 3d, The Unclaimed Dividend Account; 4th, The Secretary of Bankrupt's Account; 5th, The Secretary of Bankrupts' Compensation Account; together with Appendixes to the two last-named accounts, of the payments made, to whom, and whether as Salaries, Compensation, or other Allowances.

DIVIDENDS.		PAYMENTS MADE BY ORDER OF		
Amount Transferred.	Amount Paid out.	Court.	Judges:— Lord Chancellor.	Commissioners.
From 31st December 1838 to 1st January 1840.				
£295,171 12 5	£311,856 5 10	£14,629 6 5	£5,674 11 5	* £94,325 7 9
Net Balances existing on 1st January 1840, on				
1. The Bankruptcy Fund Account.	2. The Interest arising from Bankruptcy Fund Account.	3. The Unclaimed Dividend Account.	4. The Secretary of Bankrupt's Account.	5. The Secretary of Bankrupts' Compensation Account.
£615,358 0 10	£30,578 9 6	£1,106 1 4	£7,239 4 3	£1,600 9 2

#### APPENDICES TO ACCOUNTS.

##### No. 4.—The Secretary of Bankrupts' Account.

Payments made from 31st December 1838 to 1st January 1840.

##### As Salaries.

	£. s. d.	£. s. d.
Erskine, Right Honourable Thomas, Chief Judge .....	750 0 0	
Cross, Sir John .....	2,000 0 0	
Rose, Sir George .....	2,000 0 0	
Evans, J. ....		
Fane, R. G. C. ....		
Fonblanque, J. S. M. } Six at .....	1,500 0 0	9,000 0 0
Holroyd, E. ....		
Merivale, J. H. ....		
Williams, Sir C. F. ....		
Lawes, Serjeant E. ....		
Barber, W. .... } Registrars. ....		
Barnes, J. .... }		
Campbell, J. .... }		
Ayrton, W. S. .... }		
Parry, F. C. .... }		
Richardson, D. H. ....		
Whitehead, W. H. ....		
Bousfield, (arrears of Salary) Deputy Registrar .....		62 8 5
Gregg, F. ditto. ....		600 0 0
Vizard, William, Secretary of Bankrupts. ....		1,200 0 0
Miller, J. 1st Clerk to ditto. ....		500 0 0
Smith, William, 2d Clerk to ditto. ....		194 7 8
Wilsher, for 2d Clerk to 11th January 1839. ....		75 0 0
		21,531 16 1

## As Compensations.

	L.	s.	d.	L.	s.	d.
Belt, R. ....	200	0	0			
Beames, J. ....	200	0	0			
Beauclerk, J. ....	100	0	0			
Collinson, G. D. ....	200	0	0			
Clayton, N. ....	200	0	0			
Ellison, J. ....	200	0	0			
Metcalse, T. ....	200	0	0			
Newland, J. ....	200	0	0			
Pensam, J. ....	95	0	0			
Rawlins, A. H. ....	200	0	0			
Roberts, Wm. ....	200	0	0			
Swanson, C. T. ....	200	0	0			
Smith, E. G. ....	200	0	0			
Trebeck, J. ....	200	0	0			
Turner, J. ....	200	0	0			
Welfitt, Wm. ....	28	0	0			
<b>Collinson, Annuity due 11th January 1838. ....</b>	<b>2,823</b>	<b>0</b>	<b>0</b>	<b>200</b>	<b>0</b>	<b>0</b>

## HANAPER OFFICERS.

Thurlow, Rev. T., Clerk of Hanaper ....	484	16	9			
Allen, L. ....	52	0	0			
Gawler, J. ....	52	0	0			
Turton, T. ....	52	0	0			
Utterston, E. V. ....	52	0	0			
Vesey, J. ....	52	0	0			
Twiss, H., Examiner of Letters Patent ....	50	0	0			
Blazdell, A., Running Porter to Court of Chancery ....	30	9	7			
Lewis, C., Crier of Court of Chancery ....	30	9	7			
Smith, W. T., Clerk of Chancery, Public Office ....	175	0	0			
Holdship, J., Chaff Wax ....	994	0	0			
Hand R., Patentee Sealer ....	785	15	0			
Larmouth, W., Lord Chancellor's Messenger ....	200	0	0			
Elley, J., late First Clerk to Secretary of Bankrupts ....	400	0	0			
<b>Thurlow, Patentee of Bankrupts. ....</b>	<b>3,410</b>	<b>10</b>	<b>11</b>	<b>7,352</b>	<b>14</b>	<b>6</b>
				<b>13,786</b>	<b>5</b>	<b>5</b>

\* The amount exhibited in this column of payments made by order of commissioners arises in consequence of an order of the Lords Commissioners of the Great Seal, dated 31 October 1835, whereby the signature of Judge for payments out was dispensed with, and the signature of a Commissioner, testified by a Deputy Registrar, was substituted.

\* In addition to this amount, the sum of 23,000*l.* belongs to this account, which sum has been invested in the purchase of 25,240*l.* 1*s.* 1*d.* Bank three per cent. consolidated annuities, and forms part of the sum of 486,277*l.* 16*s.* 8*d.*, standing to "The Bankruptcy Fund Account."

B. MONTAOU, A.

## LEGAL OBITUARY OF 1839.

## February.

## January.

- 18.—Richard Smith, of Birmingham, solicitor, aged 71.
- 24.—Thomas Sterling, aged 94, coroner for Middlesex during 24 years. He practised in the early part of his life as an attorney. He was deputy clerk of the peace of the county for 40 years.
- Josh. Smith, one of the benchers of Gray's Inn, aged 81; called to the bar in 1794. He was assessor of the Bristol Court of Requests.
- 28.—John Baines, one of the sworn clerks of the Court of Chancery.
- 31.—George Munday, chief clerk to one of the Masters in Chancery, aged 48.
- 5.—Sir John Dickenson Fowler, of Burton-upon-Trent, solicitor, aged 78, many years coroner of that town.
- 9.—Henry Collingwood Selby, aged 91. He was clerk of the peace for Middlesex for 60 years. He was called to the bar on the 6th May, 1777, by the Society of Gray's Inn, of which society he was twice treasurer.
- 11.—The Right Hon. Wm. Saurin, aged 83. He was called to the bar in 1780, and obtained a patent of precedence in 1798. He was appointed Attorney General in 1807, and held that office for 15 years.
- 15.—Stephen Rothery, Attorney General for the Island of Trinidad, aged 34. Warwick Hele Tonkin, aged 88, a bencher

of the Middle Temple. He was called to the bar on the 26th Nov., 1773, and was for 50 years town clerk and deputy recorder of Plymouth.

17.—The Right Hon. Wm. Adam, Lord Chief Commissioner of the Jury Court of Scotland, and a bencher of Lincoln's Inn. He was called to the English bar on the 25th April, 1782.

18.—John Dyneley, of Gray's Inn, solicitor to the Governors of Queen Anne's Bounty, and formerly secretary to the presentations.

### March.

14.—William Henry Thurlow, solicitor, aged 27, of the firm of Messrs. Sweet, Sutton, & Co., son of the Rev. E. S. Thurlow, prebendary of Norwich, and great nephew of Lord Chancellor Thurlow.

21.—Josh. Beet Clark, of Dronfield, Derbyshire, solicitor, aged 25.

25.—Samuel Compton Cox, late one of the Masters in Chancery, aged 82. See Memoir 18 L. O. 450.

26.—Sir Stephen Gaselee, late one of the Judges of the Common Pleas, aged 76. See Memoir, 18 L. O. 450.

### April.

John Aldridge, solicitor, late of Lincoln's Inn, aged 84, and formerly clerk to the Mason's Company.

Thos. Cormack, barrister at law of the Middle Temple. Called 10th June, 1831.

5.—Wm. Reader, one of the benchers of the Middle Temple, formerly recorder of Nottingham, aged 80. He was called to the bar on the 17th November, 1788.

26.—Samuel Straight, of the Sessions House, Old Bailey, aged 36, a solicitor.

30.—Geo. Peter Holford, aged 71. He was called to the bar by the society of Lincoln's Inn, 12th July, 1791. He was several times elected a member of the House of Commons.

### May.

3.—John James Fraser, barrister at law.

8.—Patrick Brady Leigh, of the Western Circuit. He was called to the bar on the 8th June, 1831, by the society of Gray's Inn. He was the author of Treatises on the Poor Laws, and the Law of Nisi Prius.

Charles Henderson, of Oxford, solicitor.

16.—Wm. Geo. Adam, Accountant General of the Court of Chancery, and a bencher of Lincoln's Inn. He was called to the bar on the 15th November, 1806.

### June.

4.—Geo. Robt. Marriott, one of the clerks of Nisi Prius. He was called to the bar 1st June, 1832, by the Inner Temple.

17.—Saml. Grove Price, late M.P. for Sandwich and Deal, aged 45. He was called to the bar on the 28th April, 1818, by the society of Lincoln's Inn. He went the Home Circuit for some time, but rarely practised, and then only as a parliamentary counsel.

20.—Henry Rush, solicitor, aged 26.

### July.

15.—Winthrop Mackworth Praed, M.P., aged 37, recorder of Barnstaple, son of the late Mr. Serjeant Praed. He was called to the bar by the Middle Temple on the 29th May, 1829, and went the Norfolk Circuit.

17.—Wyndham Goodden, aged 83. He was 34 years Chief Commissioner of the Bath Court of Requests. He was called to the bar by the Middle Temple on the 26th June, 1789.

19.—Henry Martin, one of the benchers of Lincoln's Inn, and lately a Master in Chancery. He was called to the bar on the 29th April, 1789.

28.—William Shutt, one of the magistrates at the Marylebone Police Court, formerly of the Oxford Circuit. He was called to the bar by the Middle Temple, 28th January, 1814.

### August.

6.—John Chadborn, of Gloucester, aged 55, a solicitor, one of the executors of the late Mr. Wood of that city.

Robert Rankin, Esq., Chief Justice of Sierra Leone.

William Bell, advocate, author of the Dictionary and Digest of the Law of Scotland.

18.—Edward Pearce, solicitor, of Bodmin, one of the aldermen of the borough.

19.—Edgar Taylor, of Bedford Row, F.S.A., solicitor, aged 46. See memoir, 18 L. O. 405.

21.—William John Willett of Margate, formerly of Essex Street, Strand, aged 43, a solicitor.

23.—Rowland Wilks, of Finsbury Place, aged 37, a solicitor, vestry clerk, and clerk to the Board of Guardians of the parish of St. Luke, son of Mr. Wilks, many years M.P. for Boston.

25.—Henry Hayes Tizard, town clerk of Weymouth for more than 20 years. He was an alderman of the borough, and twice served the office of mayor.

26.—Alexander Fraser, aged 83, of Lincoln's Inn Fields, solicitor.

31.—Richard Rodd, of Devonport, solicitor, aged 67. He was upwards of 25 years clerk to the commissioners.

### September.

4.—Thomas Roberson, aged 70, town clerk of Oxford, and clerk of the peace.

9.—Edward Chapman, solicitor, of Devonshire Street, Queen Square.

25.—Mr. Justice Vaughan, aged 72. See memoir, 19 L. O. 33.

28.—William Beetham, F.R.S., formerly a solicitor, a magistrate and deputy lieutenant of Middlesex.

30.—James Rimington, M.A. He was called to the bar by the Middle Temple on the 8th May, 1812. He attended the Northern Circuit, was a commissioner of bankruptcy for Sheffield, and one of the justices of the peace, and deputy lieutenant for the west riding of Yorkshire.

*October.*

21.—Joshua Battye, solicitor of Ely Place, aged 39.  
Benjamin Kerr, barrister at law.

*November.*

7.—Thomas Gammon Acton, of Elm Court, Temple, solicitor.

8.—John Bather, aged 58, recorder of Shrewsbury, and one of the revising barristers. He was a member of Lincoln's Inn, and was called to the bar on the 24th November, 1807, and went the Oxford Circuit.

16.—Thomas Thompson, of the Inner Temple, aged 60, barrister at law. He was called to the bar, 25th November, 1819.

28.—\* Robert Finch Newman, aged 47, late solicitor to the city of London.

J. Broughton, of Tewkesbury, solicitor, aged 49. He was chamberlain of that borough for twenty-four years.

*December.*

3.—H. Waddington, Recorder of Warwick. John Hollist, of Farnham, solicitor, aged 80.

5.—Richard Greenland Denne, of the Inner Temple, aged 44. He was called to the bar the 24th November, 1826.

11.—George James Walls, of Hart Street, Bloomsbury, solicitor, aged 28.

12.—Richard Dally, aged 72, formerly a solicitor at Chichester.

13.—William Comerford Clarkson, of Doctors Commons, aged 76.

William Frederick Lawson, Clerk of the Peace for the county of Surrey.

15.—Charles Penruddocke, of the Middle Temple. He was called to the bar the 28th November, 1823.

16.—Francis Const, aged 88. He was called to the bar by the Society of the Middle Temple, 7th February, 1783. He edited several editions of Bolt's Poor Laws, and was chairman of the Middlesex and Westminster Sessions: the latter office he held till his death.

22.—Robert Belt, of the Inner Temple, called to the bar 5th February, 1802, and practised some years at the Equity bar. He compiled a supplement, and added many learned notes to the Reports of Vesey, sen., and was a Commissioner in Bankruptcy under the old system.

31.—Thomas Richard Watkyns, solicitor, of Hereford, aged 57.

*Dates not known.*

\* Charles Frederick Collins, of Lincoln's Inn Fields, solicitor.

\* Daniel Ferard, of Austin Friars, solicitor.

\* William Crowdy, Highworth, Wiltshire, solicitor.

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We have had the curiosity to estimate the average duration of the lives of those included in the preceding obituary, two of which exceeded 90, and four died under 30: the average during the year appears to have been about the age of 58.

\* The names of the gentlemen marked thus were members of the Incorporated Law Society.

## CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

### *Summer Circuits, 1840.*

**SOUTHERN CIRCUIT.**

H. R. REYNOLDS, Esq. Chief Commissioner.  
*Berkshire*, at Reading, Tuesday, June 23.  
*Oxfordshire*, at Oxford, Thursday, June 25.  
*Worcestershire*, at Worcester and City, Saturday, June 27.

*Herefordshire*, at Hereford, Tuesday, June 30.  
*Rutlandshire*, at Presteigne, Wednesday, July 1.  
*Cardiganshire*, at Cardigan, Friday, July 3.  
*Pembrokeshire*, at Haverfordwest and Town, Saturday, July 4.

*Carmarthenshire*, at Carmarthen and Borough, Tuesday, July 7.

*Glamorganshire*, at Swansea, Thursday, July 9.  
*Glamorganshire*, at Cardiff, Saturday, July 11.  
*Brecknockshire*, at Brecon, Monday, July 13.  
*Monmouthshire*, at Monmouth, Wednesday, July 15.

*Gloucestershire*, at Gloucester and City, Friday, July 17.

*At the City of Bristol*, Tuesday, July 21.

*Somersetshire*, at Bath, Friday, July 24.

*Somersetshire*, at Wells, Monday, July 27.

*Devonshire*, at Plymouth, Thursday, July 30.

*Cornwall*, at Bodmin, Saturday, Aug. 1.

*Devonshire*, at Exeter and City, Tuesday,

Aug. 4.

*Dorsetshire*, at Dorchester, Friday, Aug. 7.

*Wiltshire*, at Salisbury, Tuesday, Aug. 11.

*At the Town of Southampton*, Wednesday,

Aug. 12.

*Hampshire*, at Winchester, Thursday, Aug. 13.

**NORTHERN CIRCUIT.**

J. G. HARRIS, Esq., Commissioner.  
*Rutlandshire*, at Oakham, Wednesday, June 10.  
*Yorkshire*, at Sheffield, Friday, June 12.  
*Yorkshire*, at Wakefield, Monday, June 15.  
*At the Town of Kingston-upon-Hull*, Monday,

June 22.

*Yorkshire*, at York and City, Wednesday, June 24.

*Yorkshire*, at Richmond, Saturday, June 27.

*Durham*, at Durham, Monday, June 29.

*Northumberland*, at Newcastle-upon-Tyne and Town, Wednesday, July 1.

*Cumberland*, at Carlisle, Saturday, July 4.

*Westmorland*, at Appleby, Monday, July 6.

*Westmorland*, at Kendal, Tuesday, July 7.

*Lancashire*, at Lancaster, Thursday, July 9.

*Lancashire*, at Preston, Friday, July 17.

*Flintshire*, at Mold, Monday, July 20.

*Denbighshire*, at Ruthin, Wednesday, July 22.

*Anglesey*, at Beaumaris, Friday, July 24.

*Carnarvonshire*, at Carnarvon, Monday, July 27.

*Merionethshire*, at Dolgelly, Wednesday, July 29.

*Montgomeryshire*, at Welshpool, Friday, July 31.

*Lancashire*, at Liverpool, Monday, Aug. 3.

*Cheshire*, at Chester and City, Thursday,

Aug. 6.

**MIDLAND CIRCUIT.**

T. B. BOWEN, Esq., Commissioner.

*Essex*, at Chelmsford, Saturday, July 18.

*Essex*, at Colchester, Monday, July 20.  
*Suffolk*, at Ipswich, Tuesday, July 21.  
*Norfolk*, at Yarmouth, Thursday, July 23.  
*Norfolk*, at Norwich and City, Friday, July 24.  
*Norfolk*, at Lynn, Monday, July 27.  
*Suffolk*, at Bury Saint Edmunds, Tuesday, July 28.  
*Cambridgeshire*, at Cambridge, Wednesday, July 29.  
*Huntingdonshire*, at Huntingdon, Friday, July 31.  
*Northamptonshire*, at Peterborough, same day.  
*Lincolnshire*, at Lincoln and City, Monday, Aug. 3.  
*Nottinghamshire*, at Nottingham and Town, Wednesday, Aug. 5.  
*Derbyshire*, at Derby, Friday, Aug. 7.  
*Leicestershire*, at Leicester, Saturday, Aug. 8.  
*At the City of Lichfield*, Monday, Aug. 10.  
*Staffordshire*, at Stafford, Tuesday, Aug. 11.  
*Shropshire*, at Shrewsbury, Friday, Aug. 14.  
*Shropshire*, at Oldbury, Monday, Aug. 17.  
*Warwickshire*, at Birmingham, Tuesday, Aug. 18.  
*At the City of Coventry*, Thursday, Aug. 20.  
*Warwickshire*, at Warwick, Friday, Aug. 21.  
*Northamptonshire*, at Northampton, Monday, Aug. 24.  
*Bedfordshire*, at Bedford, Tuesday, Aug. 25.  
*Buckinghamshire*, at Aylesbury, Wednesday, Aug. 26.

**HOME CIRCUIT.**

**W. J. LAW, Esq., Commissioner.**  
*Sussex*, at Horsham, Friday, July 3.  
*Kent*, at Dover, Saturday, July 11.  
*At the City of Canterbury*, Monday, July 13.  
*Kent*, at Maidstone, Tuesday, July 14.  
*Hertfordshire*, at Hertford, Saturday, Aug. 1.

**INCORPORATED LAW SOCIETY.**

**MEMBERS ADMITTED.**

Thomas Plews, Trinity Square, Newington.  
Charles Harman, High Wycombe.  
Daniel Gould, Honiton.  
George Evan Thomas, Furnival's Inn.  
Thomas Martin Wilkin, Bartholomew Close.  
James Husband, Devonport.  
Godfrey Tallents, Newark.  
Charles Reynolds Williams, Lincoln's Inn Fields.  
Thomas Lott, Bow Lane, Cheapside.  
Thomas Hart, Reigate.  
Charles Francis, St. Swithin's Lane.  
Archibald Richard Francis Rosser, New Boswell Court.  
John Thompson, Lincoln's Inn Fields.  
Stevens Tripp, Gray's Inn.  
Thomas Braine Browne, Dartford.  
John Conquest, Moorgate Street.  
George Teede, Sloane Terrace, Chelsea.  
William Stoughton Vardy, Finsbury Place.  
George Cox, Bucklersbury.  
Francis Bentall, Coleman Street.  
James Moody Taylor, Clement's Lane, Lombard Street.  
John Hayward, Oswestry.  
Joseph Parkes, Great George Street, Westminster.  
Joseph John Wright, Sunderland.  
Charles James Tapp Burt, Aldermanbury.

**MASTERS EXTRAORDINARY IN CHANCERY.**

*From 25th February to 20th March, 1840, both inclusive, with dates when gazetted.*

Tetlow, John Richard, jun., Liverpool. Feb. 25.  
Grundy, John, Bury, Lancaster. Feb. 25.  
Hall, Joseph, Keswick, Cumberland. Feb. 25.  
Slater, Joseph, Wigan, Lancaster. Feb. 25.  
Jarvis, Lewis Whinckop, King's Lynn, Norfolk. Feb. 28.  
Cooper, William Salmon, Colchester. Feb. 28.  
Gilbertson, Isaac, Bala, Merioneth. March 3.  
Frodsham, Frederick, Liverpool. March 6.  
Wightwick, Thos. Norman, Canterbury. March 6.  
Mercer, George, Deal. March 13.  
Edwards, James Barber, Deal. March 13.  
Coomba, Thomas, jun., Dorchester. March 17.  
Bonsall, John George William, Machynlleth, Montgomery. March. 20.

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From February 25th to March 20th, 1840, both inclusive, with dates when gazetted.*

Tibbits, James, and John Wilmhurst, jun., Warwick, Attorneys and Solicitors. Feb. 25.

**BANKRUPTCIES SUPERSEDED.**

*From February 25th to March 20th, 1840, both inclusive, with dates when gazetted.*

Smith, Edward, Great Yarmouth, Norfolk, and of the City of Norwich, Linen Draper and Tea Dealer. Feb. 25.  
Chalmers, David, Great Yarmouth, Norfolk, and of the City of Norwich, Linen Draper and Tea Dealer. Feb. 25.  
Winstanley, John, Chorley, Lancaster, Druggist and Grocer. March 6.  
Beckett, Samuel, and John Beckett, Audlem, Chester, Drapers. March 20.

**BANKRUPTS.**

*From February 25th to March 20th, 1840, both inclusive, with dates when gazetted.*

Agutter, Thomas, Deptford, Kent, Fellmonger. Green, Off. Ass.; Smith & Co., King's Arms Yard. Feb. 25.  
Ansell, Wolfe, Pontypool, Monmouth, Shopkeeper. Jenkins & Co., New Inn; Clarke & Co., Bristol. Feb. 25.  
Allen, Janies, and Frederick Phillips, Birmingham, Manufacturers of Lamps and Bronzed Wares. Chaplin, Gray's Inn Square; Richards & Co., Birmingham. March 13.  
Andrew, Jonathan, Manchester, Merchant and Commission Agent. Milne & Co., Temple; Jessa, Manchester. March 17.  
Buckett, John, Overthorpe, Northampton, Sheep Salesman. Aplin, Banbury. Feb. 25.  
Blackett, Powell Charles, Green Street, Grosvenor Square, Lodging House Keeper. Gibson, Off. Ass.; Maughan & Kennedy, Chancery Lane. Feb. 28.  
Baron, Thomas, Bolton-le-Moors, Lancaster, Cotton Spinner. Barker, Gray's Inn Square; Woodhouse, & Co., Bolton-le-Moors. Feb. 28.

- Bonnor, Benjamin, Gloucester, Money Scrivener. *Washburn, Gloucester; White & Co., Bedford Row.* Feb. 28.
- Burton, Henry, Wem, Salop, Corn Dealer. *Warren, Market Drayton; Pinnager & Co., Gray's Inn Square.* Feb. 28.
- Bardsley, John, Denton, Manchester, Hat Manufacturer and Publican. *Hadfield, Manchester; Johnson & Co., Temple.* Feb. 28.
- Brookes, John, Birmingham, Builder. *Taylor & Co., Bedford Row; Tyndall & Co., Birmingham.* March 3.
- Bowie, Robert, and William Bowie, Burr Street, Lower East Smithfield, Surgeons and Apothecaries. *Groom, Off. Ass.; Haslam & Co., Copthall Court.* March 6.
- Belt, Sarah, and James Whitfield, Winlaton, Durham, Merchants. *Shield & Co., Queen Street, Cheapside; Preston, Newcastle-upon-Tyne.* March 6.
- Bennett, John, Halifax, York, Draper. *Abbott & Co., Charlotte Street, Bedford Square; Bennett & Co., Manchester.* March 6.
- Burrow, Edward, Liverpool, Tailor and Draper. *Knapper & Co., Liverpool; Oliver & Co., Old Jewry.* March 10.
- Barnes, Edward, Sheffield, York, Cutler. *Rodgers, Devonshire Square, Bishopsgate; Goodison, or Rodgers & Son, Sheffield.* March 10.
- Blackburn, Henry, Halifax, York, Grocer. *Adlington & Co., Bedford Row; Wavell, Halifax.* March 10.
- Barrett, Abraham, Guiseley, York, Clothier. *Wilson, Southampton Street, Bloomsbury Square; Payne & Co., Leeds.* March 13.
- Bellamy, Richard Wanklin, Ross, Hereford, Grocer. *Burrup, Gloucester; White & Co., Bedford Row.* March 13.
- Brown, John, Bunhill Row, Middlesex, Silk and Ribbon Warehouseman. *Whitmore, Off. Ass.; Goddard, Wood Street, Cheapside.* March 20.
- Butterworth, Joseph Horatio, Manchester, and also of Gutter Lane, London, Stuff Merchant. *Jeyes & Co., Chancery Lane; Benson, Manchester.* March 20.
- Bell, Joseph, Greensfield, Northumberland, Ship Owner. *Charlton or Woodman, Morpeth; Leadbitter, Staple Inn.* March 20.
- Cooke, Richard Bond, Leamington Priors, Warwick, Hatter. *Sturmy, Wellington Place, London Bridge; Patterson & Co., Leamington Priors.* Feb. 28.
- Chapman, William, Birmingham, and Thomas Kenning, Bordesley, Aston-juxta-Birmingham, Fire Iron Makers and Chymists; Swain & Co., Frederick's Place, Old Jewry; Whately & Co., Birmingham. Feb. 28.
- Crane, David, Wolverhampton, Stafford, Publican and Maltster. *Jeyes & Co., Chancery Lane; Daniel, Worcester and Kidderminster.* Feb. 28.
- Clarke, John, Manchester, Paper Dealer and Drysalter. *Norris, Manchester; Newton & Co., Gray's Inn.* Feb. 28.
- Cornforth, William, jun., Holbeck, Leeds, York, Flax Spinner. *Wilson, Southampton Street, Bloomsbury Square; Payne & Co., Leeds.* March 3.
- Carter, William, Oxford Street, Grocer. *Clark, Off. Ass.; Wood & Co., Corbet Court, Gracechurch Street.* March 13.
- Cranston, John, Ringwood, Southampton, Upholsterer, Cabinet Maker and Auctioneer. *Davy, Ringwood; Hobne & Co., New Inn.* March 13.
- Coleman, Henry, Union Street, Old Broad Street, London, and of Arden Terrace, Camberwell Grove, Surrey, Merchant. *Gibson, Off. Ass.; Asturte & Co., Cheapside.* March 17.
- Croxson, William Henry, Rayleigh, Essex, Wheelwright. *Graham, Off. Ass.; Stevens & Co., Queen Street, City.* March 17.
- Cheetham, Robert, and Joseph Cheetham, Stockport, Chester, Cotton Spinners. *Miles & Co., Temple; Casson & Co., Manchester.* March 17.
- Cutts, John, Manchester, Machine Maker and Brazier. *Mattoon & Co., Temple; Atkinson & Co., Manchester.* March 20.
- Cartwright, Samuel, Great Bolton, Lancaster, Ironmonger. *Miles & Co., Temple; Hibbert, Bolton.* March 20.
- Davies, George, Knightsbridge, Middlesex, Grocer. *Johnson, Off. Ass.; Adlington & Co., Bedford Row.* March 13.
- Dean, Charles, King's Heath, Worcester, Edward Cope, of Manchester, and William Tomlinson, jun., of Birmingham, lately carrying on business in Manchester and in Birmingham as Ironmasters. *Chaplin, Gray's Inn Square; Stubbs & Co., Birmingham.* March 13.
- Deeming, William, and John Deeming, Manchester, Hotel Keepers. *Mitchell & Co., New London Street; Upton, Manchester.* March 17.
- Davies, Griffith, Carnarvon, Draper and Clothier. *Griffith, Carnarvon; Widdow, Copthall Court, Throgmorton Street.* March 20.
- Driver, Richard, Manchester, Commission Agent. *Bunting, Manchester; Bower & Co., Chancery Lane.* March 20.
- Denman, William, Carnarvon, Innkeeper. *Williams, Carnarvon; Weeks & Co., Cook's Court, Lincoln's Inn.* March 20.
- Elistob, Dryden, Conduit Street, Bond Street, Underwriter. *Green, Off. Ass.; Overton & Co., Lothbury.* March 6.
- Edington, Wm., North Audley Street, Jeweller. *Graham, Off. Ass.; Elwin, Blackfriar's Road.* March 20.
- Foraell, Samuel, Leicester, Hosier, Worsted Spinner and Woolstapler. *Dynley, & Co., Gray's Inn; Ingram & Co., Leicester.* Feb. 28.
- Fairclough, William, Wavertree, Lancaster, Innkeeper and Omnibus Proprietor, Warrington Liverpool; *Perkins, Gray's Inn Square.* March 6.
- Furzman, James, Smart's Buildings, Holborn, Victualler. *Graham, Off. Ass.; Bassendale & Co., Great Winchester Street.* Feb. 25.
- Ford, Richard, late of Shrewsbury, but now of Stafford, Scrivener. *Tooke & Co., Bedford Row; Clarke, Longton Potteries, Staffordshire.* March 17.
- Green, Joseph, Ipswich, Suffolk, Linen Draper. *Lackington, Off. Ass.; Jones & Co., Sizer Lane.* Feb. 28.
- Garratt, John, Tipton, Stafford, and also of Sedgley in the same county, Grocer. *Chaplin, Gray's Inn Square; Richards & Co., Birmingham.* March 13.
- Galloway, John, and William Newton, Castleton, Rochdale, Lancaster, Cotton Spinners. *Norris, Manchester; Newton & Co., Gray's Inn.* March 13.
- Gibson, Joseph Vincent, Manchester, Veterinary Surgeon. *Gibson, Manchester; Hall & Co., Lincoln's Inn Fields.* March 17.
- Hodge, James, Tiverton, Devon, Coach Maker. *How, Tiverton; Bennett, Featherstone Buildings.* Feb. 25.
- Hickman, Richard, Bilston, Stafford, Timber Mer-

- chant and Builder. *Brown, Bilston*; *Williamson & Co.*, Verulam Buildings, Gray's Inn. Feb. 28.
- Hilton, Daniel, Oldham, Lancaster, Cotton Spinner. *Brackenbury*, Manchester, or *Johnson & Co.*, Temple. Feb. 28.
- Hammond, William John, Essex Street, Strand, Lessee of the Theatre Royal, Drury Lane, and of the New Strand Theatre, Middlesex, also of the Liverpool Theatre, Liverpool, and Tenant of the Doncaster Theatre, Doncaster, Publisher of Music, Book and Printseller. *Cannan*, Off. Ass.; *Lewis & Co.*, Ely Place, Holborn. March 3.
- Howe, John Aplin, Bristol, Umbrella and Parasol Manufacturer. *Jones & Co.*, Size Lane; *Harmer*, Bristol. March 3.
- Holland, Henry, Westbranwich, Stafford, Scrivener. *Smith & Co.*, New Boswell Court; *Greatwood*, Birmingham. March 3.
- Heatley, John, Manchester, Brewer, Innkeeper and Victualler. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. March 6.
- Hewlett, Thomas Barnard, and Daniel Hewlett, Northampton, Ironmongers. *Collis*, Stourbridge, Worcester; *Clowes & Co.*, Temple. March 6.
- Howard, David, Huddersfield, York, Drysalter. *Lake & Co.*, Basinghall Street; *Battye & Co.*, Huddersfield. March 6.
- Hunt, John Wreford, Liverpool, Lamp Manufacturer. *Hall & Co.*, Verulam Buildings, Gray's Inn; *Neal*, Liverpool. March 10.
- Hugill, John, Whitby, York, Spirit Merchant. *Mibie & Co.*, Temple; *Belcher & Co.*, Whitby. March 10.
- Hitchman, James, Aberdare, Glamorgan, Shopkeeper. *Poole & Co.*, Gray's Inn Square; *Messrs. Livett*, Bristol. March 10.
- Higgins, John Crockerton, Longbridge Deverill, Wilts, and of Frome Selwood, Somerset, Tallow Chandler and Soap Boiler. *Frampton*, South Square, Gray's Inn; *Miller*, Frome Selwood. March 13.
- Harman, James Camfield, Charles Street, Middlesex Hospital, and Starch Green, Hammersmith, Middlesex, Coach Maker. *Edwards*, Off. Ass.; *Goren*, South Molton Street. March 17.
- Harrall, Samuel Sampson, Leeds, York, Tailor and Draper. *Middleton*, Leeds. March 17.
- Hesketh, Edmund, Hulme, Lancaster, Victualler. *Addington & Co.*, Bedford Row; *Bell*, Manchester. March 20.
- Ion, Wm., Pontypool, Monmouth, Draper. *Holme & Co.*, New Inn; *Prideaux*, Bristol. March 6.
- Isaac, Phineas, Norton Falgate, Furrier. *Clark*, Off. Ass.; *Woods & Co.*, Corbet Court, Gracechurch Street. March 17.
- James, Samuel, Jun., and Walter James, High Street, Whitechapel, Smiths and Ironmongers. *Graham*, Off. Ass.; *Woolton*, Tokenhouse Yard. Feb. 25.
- Jones, John, Liverpool, Merchant. *Willis, & Co.*, Tokenhouse Yard; *Mason*, Liverpool. Feb. 28.
- Jacques, Benjamin, Standhard Hill, Nottingham, John Cotton, Nottingham Park, Nottingham, and Thomas Barfoot Oliver, Quorndon, Leicester, carrying on business in the town of Nottingham, as Hosiers. *Yallop*, Furnival's Inn; *Messrs. Parsons*, Nottingham. March 13.
- Jull, George, Leamington, Warwick, Grocer. *Michael*, Red Lion Square; *Amos*, Eversham. March 13.
- Jefferis, Benjamin, Newport, Monmouth, Ironmonger. *Hicks, & Co.*, Bartlett's Buildings;
- Hinton*, Bristol; *Webb & Co.*, Newport. March 17.
- Kollmann, George Augustus, Saint Martin's Lane, Piano Forte Maker. *Johnson*, Off. Ass.; *Martineau & Co.*, Carey Street. Feb. 28.
- Kershaw, Hugh, Manchester, Twist Dealer, and Commission Agent. *Addington, & Co.*, Bedford Row; *Chew*, Manchester. March 3.
- Kilvert, John, Manchester, Calico and Fustian Merchant. *Makinson, & Co.*, Temple; *Atkinson & Co.*, Manchester. March 13.
- Kinder, William, Hodge Mill, Mottram, in Longendale, Chester, Cotton Spinner. *Brackenbury*, Manchester; *Johnson & Co.*, Temple. March 20.
- Kimbell, Thomas, Haddenham, Buckingham, Grocer, Cheesemonger and Trader. *Alsager*, Off. Ass.; *Dods & Co.*, Northumberland Street, Strand. March 6.
- Krauss, Adolphus, Salford, Lancaster, Manufacturer. *Mibie & Co.*, Temple; *Crossley & Co.*, Manchester. March 20.
- Long, Giles, Croydon, Surrey, Coal Merchant. *Gibson*, Off. Ass.; *Smith*, Bridge Street, Southwark. Feb. 28.
- Liddle, William, Leeds, York, Flax Spinner. *Bell & Co.*, Bow Church Yard. *Rawson, jun.*, Leeds. March 3.
- Lloyd, John, Liverpool, Linen and Woollen Draper. *Johnson & Co.*, Temple; *Blair*, Manchester. March 17.
- Little, David, and David Chalmers, Great Yarmouth and Norwich, Norfolk, Drapers and Tea Dealers. *Cattlin*, Ely Place. March 20.
- Minett, Joseph, Essex Wharf, Essex Street, Strand, Coal and Coke Merchant and Lime Burner. *Turquand*, Off. Ass.; *Watkin*, Torrington Square. Feb. 28.
- Mulcaster, James, and Benjamin Vaughan, Saint Paul's Church Yard, London, Wholesale Furriers and Dealers in Straw Plait. *Lackington*, Off. Ass.; *Braham*, Chancery Lane. Feb. 28.
- Martin, Henry, West Teignmouth, Devon, Linen Draper. *Rhodes & Co.*, Chancery Lane; *Drake*, Exeter. Feb. 28.
- Mac Caffery, John, Mirfield, York, Contractor. *Hall*, Aldermanbury, London; *Walker*, Dewsbury. March 3.
- Mason, Allen, Chigwell, Essex, Corn and Coal Dealer and Farmer. *Pennell*, Off. Ass.; *Fisher*, Bucklersbury. March 6.
- Morris, William, Birmingham, Builder. *Tarleton*, Birmingham. March 6.
- Martyn, John, and Thomas Moody, Newcastle-upon-Tyne, Wholesale and Retail Linen and Woollen Drapers, Silk Mercers and Hosiers. *Gibson*, Newcastle-upon-Tyne; *Swain & Co.*, Frederick's Place, Old Jewry. March 10.
- Milne, Thomas, Stockton-upon-Tees, Durham, Draper and Shopkeeper. *Addington & Co.*, Bedford Row; *Chew*, Manchester. March 13.
- Miers, William, Strand, Ormula Miniature Frame Maker. *Cannan*, Off. Ass.; *Eicke*, Eccleston Street, Pimlico. March 17.
- M'Burnie, Thomas, and David M'Burnie, Huddersfield, York, Dyers. *Battye & Co.*, Chancery Lane; *Messrs. Clough*, Huddersfield. March 20.
- Mathers, Thomas, Canterbury, Kent, News Agent and Printer. *Cattarus & Co.*, Mark Lane. March 20.
- Norris, Josh., Birmingham, Wholesale Draper. *Clarke & Co.*, Lincoln's Inn Fields. *Cohmore & Co.*, Birmingham. March 13.
- Oakes, Josh., Sheffield, York, Merchant Cutler.

- Brooksbank & Co., Great James Street, Redford Row; Hoole & Co., Sheffield. Feb. 28.*
- Prat, Richard Perrian, and Samuel Prat, Glastonbury, Somerset, and of the City of Wells, Somerset, Scriveners. Holme & Co., New Inn; Naish, Glastonbury. Feb. 28.*
- Philliskirk, Henry, Leeds, York, Tailor and Draper. Strangeways, Barnard's Inn; Robinson, Leeds. March 3.*
- Palmer, Robert, Reading, Berks, Coal Merchant, Slate and Salt Merchant and Ironfounder. Blandy, Reading; Adlington & Co., Bedford Row. March 10.*
- Papps, Charles Henry, George Street, Adelphi, Coal Merchant. Whitmore, Off. Ass.; Asprey, Furnival's Inn. March 17.*
- Pagan, Thomas, Liverpool, Linen Draper and Mercer. Makinson & Co., Temple; Atkinson & Co., Manchester. March 17.*
- Prince, Edward Bryan, William Sutcliffe Overton, and William Whitfield, Leeds, York, Joiners. Walker, Furnival's Inn; Blackburn, Leeds. March 17.*
- Payne, Thomas, Warminster, Wilts, Butcher. Frampton, South Square, Gray's Inn; Miller, Frome Selwood. March 20.*
- Price, Thomas, jun., Campden, Gloucester, Corn and Coal Dealer. Adlington & Co., Bedford Row; Hobbes, Stratford-upon-Avon. March 20.*
- Richardson, George, Smith's Buildings, City Road, Coach Maker. Clark, Off. Ass.; Gresham, Castle Street, Holborn. Feb. 25.*
- Robson, Thomas, Wall, Northumberland, Butcher and Cattle Dealer. Brooksbank & Co., Gray's Inn Square; Brown, Newcastle-upon-Tyne. Feb. 25.*
- Rothwell, Joseph, Elton near Bury, Lancaster, Cotton Spinner and Manufacturer. Adlington & Co., Bedford Row; Makinson, Manchester. Feb. 25.*
- Roberts, John, of the Coppice, near Nottingham, Gardener and Seedsman. Lees, Nottingham; Taylor, Featherstone Buildings. March 3.*
- Robinson, James, and William Robinson, Bolton-le-Moors, Lancaster, Engineers, Ironfounders and Millrights. Chester, Staple Inn; Armstrong, Preston. March 10.*
- Ratcliffe, Richard, Lowestoft, Suffolk, Coach Maker. Sherrington, Great Yarmouth; Rhodes, & Co., Chancery Lane. March 13.*
- Robertson, Wm, Liverpool, Drysiter and Merchant. Johnson & Co., Temple; Higson & Co., Manchester. March 20.*
- Storer, Joseph, Ibstock, Leicester, Auctioneer, Appraiser, Bill Broker, and Coal Miner. Messrs. Palmer, Mitre Court Chambers; Cowdale & Co., Hinckley, Leicester. Feb. 28.*
- Sanderson, John, Heywood, Bury, Lancaster, Fustian Manufacturer and Shopkeeper. Huddersfield, Manchester; Johnson, & Co., Temple. March 3.*
- Stephenson, Frederick, Bradford, York, Saddler and Harness Maker. Strangeways, Barnard's Inn; Robinson, Leeds. March 3.*
- Strange, William, Abingdon, Berks, Wine and Spirit Merchant. Turquand, Off. Ass.; Leigh, George Street, Mansion House. March 6.*
- Seville, John, and James Wright, Oldham, Cotton Spinners. Johnson & Co., Temple; Heron, & Co., Manchester. March 10.*
- Smith, Isaac, Charles Smith, and Amos Smith, Heywood, Lancaster, Cotton Spinners. Brackenbury, Manchester; Johnson & Co., Temple. March 10.*
- Stevens, Matthew, Fieldgate Street, Whitchapel, Ironfounder. Belcher, Off. Ass.; Crowder & Co., George Street, Mansionhouse. March 13.*
- Smith, William, Heaton Norris, Lancaster, Grocer, Tea Dealer and Pork Butcher. Adlington & Co., Bedford Row; Cooper or Bell, Manchester. March 13.*
- Saxelby, Thomas, Kingston-upon-Hull, Scrivener. Jackson, Hull; Shaw, Ely Place. March 13.*
- Stockwell, William Henry, Hampstead Road, Furnishing Undertaker. Pennell, Off. Ass.; Blake, & Co., Essex Street, Strand. March 17.*
- Smith, Joseph James, Gate Street, Lincoln's Inn Fields, Bookbinder. Turquand, Off. Ass.; Johnston, Cecil Street, Strand. March 20.*
- Underhill, Edward, and Joseph Slater, Watling Street, London, Warehousemen. Abager, Off. Ass.; Saunders, Queen Street Place, Southwark. March 20.*
- Vyse, Nathaniel, Nuthurst, Warwick, Farmer and Coach Proprietor. Chilton, & Co., Chancery Lane; Suckling, Birmingham. March 17.*
- Vaughan, John, Trawsfynydd, Merioneth, Pig Drover. Lowe & Co., Southampton Buildings, Chancery Lane; Lloyd, Bala. March 17.*
- Wainwright, James, Birmingham, Wine and Spirit Merchant. Chaplin, Gray's Inn, Square; Harrison, Birmingham. March 10.*
- Wilson, Thomas, Winsmore, Barnsley, York, Linen Manufacturer and Yarn Merchant. Messrs. Newman, Barnsley; Pocock, & Co., Bartholomew Close. March 10.*
- Willson, James, Liverpool, Wine Merchant. Whalley & Co., Liverpool; Lowe & Co., Southampton Buildings. March 10.*
- Woodman, John, Bristol, Hatter. Hicks & Co., Bartlett's Buildings; Hinton, Bristol. March 13.*
- Wells, William, Kingston-upon-Hull, Timber Merchant. Shaw, Ely Place; Thorney, Hull. March 13.*
- Williams, Robert Nokes, Bristol, Cabinet Maker and Timber Dealer. Hicks & Co., Bartlett's Buildings, Holborn; Hinton, Bristol. Feb. 28.*
- Watton, William, Birmingham, Printer. Chaplin, Gray's Inn Square; Harrison, Birmingham, Feb. 28.*
- Wilson, Joseph, Tyldesley Banks, Lancaster, Cotton Spinner. Makinson & Co., Temple; Atkinson & Co., Manchester. Feb. 28.*
- Wharton, Richard, Oldham, Lancaster, Innkeeper and Coach Proprietor. Bowler & Co., Chancery Lane; Heath, Manchester. March 3.*
- Wheeler, William, and Edward Wheeler, Oxford, Horse Dealers and Livery Stable Keepers. Robertson, Oxford; Miller & Co., Piccadilly, March 10.*
- Wood, Nicholas Price, Burslem, Stafford, (trading at Manchester), Banker. Makinson & Co., Temple; Atkinson, & Co., Manchester. March 17.*
- Wilson, William Augustus, Great Coram Street, and afterwards of Wapping Wall, Ship Biscuit Baker, and Dry Provision Merchant. Green, Off. Ass.; Seckley, Symond's Inn. March 20.*
- Yates, William, Maidstone, Kent, Victualler and Stone Mason. Groom, Off. Ass.; Teesdale & Co., Fenchurch Street. March 20.*

## PRICES OF STOCKS.—Tuesday, 24th March 1840.

3 per Cent. Consols Annuities - - - - -	90½ a £
New 3½ per Cent. Annuities - - - - -	99½ a £ a 9 a £
India Bonds, 3 per Cent. - - - - -	1 a 3 pm
South Sea Stock, div. 3½ per Cent. - - - - -	100½
3 per Cent. Consols for Acct., 14th April 91 a 90½	
Exchequer Bills, 1000L at 2½d. - - - - -	15s. a 19s. pm
Ditto 500L - - - - -	16s. a 19s. pm
Ditto Small - - - - -	16s. a 19s. pm

# The Legal Observer.

SATURDAY, APRIL 4, 1840.

— “Quod magis ad nos  
Pertinet, et ne scire malum est, agitamus.

HORAT.

## THE LAW OF JOINT STOCK COMPANIES.

We lost no time in bringing before our readers the important observations of Lord Cottenham with respect to joint-stock companies, in the case of *Taylor v. Salmon*.<sup>a</sup> The tone of the Courts with respect to these undertakings has in fact much altered within these few last years. Lord Eldon and Lord Ellenborough took repeated opportunities of discountenancing them, and, perhaps, of throwing impediments in the way of persons dealing with property connected with them, or investing capital in them; but Judges of late, both of Courts of Common Law and Equity, have been disposed, while exercising due control over them, to support all *bond fide* transactions with respect to them, and not to allow mere technical objections to interfere with their enforcement. The Lord Chancellor has said that he will not “decline to administer justice and to enforce rights for which there is no other remedy, from too strict an adherence to forms and rules established under very different circumstances;” and the Courts of Queen’s Bench, Common Pleas, and Exchequer, have all in several recent instances facilitated the transactions of joint-stock companies with respect to the transfer of their shares, and other dealings.<sup>b</sup> Indeed, the amount of capital embarked in these undertakings, demands this of the Judges,<sup>c</sup>

and we think they have done wisely in thus adapting themselves to the altered circumstances of the country, and sanctioning these undertakings where they are established *bond fide* for the promotion of useful undertakings; and, we think the whole subject so important, that in our ensuing volumes we propose not only to continue our practice of bringing before our readers every case relating to them as it is decided, but to collect all former decisions on the subject; and thus to present to our readers at stated intervals, a TREATISE ON THE LAW OF JOINT STOCK COMPANIES.

Among other branches connected with this subject, that of railroad companies is not the least interesting, from its direct bearing on the real property of the country, and the numerous questions which arise on this new mode of dealing with land. We have now to call attention to two cases of much importance, which have been recently reported, and which show that however desirous a Court of Equity may be to aid these companies, yet it will watch very narrowly all new powers given to them. Both cases relate to the manner in which a Court of Equity will regulate the compulsory powers for making purchases of lands given by most railway acts. In the first of these cases, *Webb v. The Manchester and Leeds Railway Company*,<sup>d</sup> several important points were considered, although not directly decided. The decision turned a good deal on the language of the particular affidavits; but it seems to be the Lord Chancellor’s opinion, that the Court will not allow a company to avail itself of the compulsory powers given them by taking land which they do not require for purposes *bond fide* sanctioned by their act of parliament. “It is quite clear,”

<sup>a</sup> 4 Myl. & C. 141, cited *ante*, p. 420.

<sup>b</sup> *Hubblewhite v. M’Morine*, 5 M. & W. 462; *London and Brighton Railway Company v. Wilson*, 6 Bing. N. C. 135; both fully stated *ante*, pp. 305—307; *Phelps v. Lyle*, 2 Per. & Dav. 314.

<sup>c</sup> See the remark of the Lord Chancellor in Debate in House of Lords, 18 L. O. 167.

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<sup>d</sup> 4 Myl. & C. 116.

says Lord Cottenham, "these proprietors cannot want a slip of twenty or thirty yards, therefore the contest is merely about the price. At the same time it is extremely important to watch over the interests of those whose property is affected by these companies, to take care that the company shall not in any misrepresentation they may make, if they have made any, be permitted to exercise powers beyond those which the act of parliament gives them, and to keep them most strictly within the powers of the act of parliament. The powers are so large — it may be necessary for the benefit of the public — but they are so large and so injurious to the interests of individuals, that I think it is the duty of every Court to keep them most strictly within those powers; and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers, but they will get none from me by way of construction of the act of parliament."

By the other case, *Stone v. The Commercial Railway Company*,<sup>c</sup> it was held that when a company empowered by act of parliament has given notice to an owner of land to treat for the purchase of a part of it, but the owner and the company cannot agree upon the terms, and the company therefore issues a precept to the sheriff to summon a jury to assess the value, the part of the land which is described in the precept as being that of which they are to assess the value, must be neither more nor less than that, for the purchase of which the owner has already been required by the notice to treat. It will be seen, from the following passages in the *Lord Chancellor's* judgment, that he adhered to the opinion that acts of this nature must be construed strictly :—

"In considering cases which arise under these acts of parliament, the law which is to regulate the transactions between the parties is found only in the acts themselves: and the first question to be asked is, whether what is intended to be done is in strict conformity with that which the act requires; for, if not, the Court will not permit the company to deal with the property, and leave the parties interested in it to take the chance of a decision in their favour after the injury has been committed. Now I have no doubt that, in this case, the company have not done that which the act requires. In the first place, in extending the injunction, as I am about to do, so as to prevent proceedings under this precept, I

think I am doing nothing more than the Vice Chancellor has in fact done. The Vice Chancellor has prohibited the company from proceeding, except with relation to what was included in the notice; and nobody can, by possibility, find out what was included in the notice. Nothing can be more vague. It is said that in this case no inconvenience would be sustained, because it has appeared in the course of the discussion here in this Court, what part of the property the company intended to take; but I apprehend that nobody could tell, before the discussion, what it was as to which the opinion of the jury would be asked; and it is quite obvious that if the act gives the company the power of doing what they were about to do here, they were not bound to communicate to their opponents what they intended to do; and if so, they might come to the jury, and ask the opinion of the jury as to part of the land with respect to which the other party had no notice. It is obvious that this power is not within the terms of the act of parliament, and that it is also extremely inconvenient to all persons with whom the company might deal; and the company must find the power within the act of parliament, or they have no right to it at all. The proceeding before the jury must be consistent with the precept, and the precept must be consistent with the notice."

## PRACTICAL POINTS OF GENERAL INTEREST.

### PUBLIC MEETING.

A CASE has been just reported by Messrs Carrington and Payne, the marginal note of which is as follows :—"Proof of annoyance and disturbance by a person present at a meeting, such as crying 'hear, hear,' and putting questions to a speaker, and making observations on his statements, will not justify the chairman of the meeting in giving such person in charge to the police." With deference to the learned reporters, it is hardly necessary to report this as a new point of law. The crying "hear, hear," and the putting a question, are two of the most harmless duties of a member of parliament, and have long been exercised with impunity; and we had not the slightest notion that they involved any question of breach of the peace. As, however, this point may be new to our readers, we have given it. But the case of which this is the marrow, in the opinion of the reporters, contains some other points on the law of public

meetings. "It appeared that the plaintiff, who was a master carpenter, on the evening of the 2d of April had been attending a meeting of a benefit society, which he left about nine o'clock, and went to a meeting of a temperance society, at which the defendant was chairman. About two hundred persons were present. There was contradictory evidence as to what part the plaintiff took in the proceedings. According to the testimony of his own witnesses, when a man who was addressing the meeting said that if a person drank water his nerves would be as hard as iron, and he would be as strong as an elephant, the plaintiff merely said, "Yes, as a dead elephant," which created some laughter, and also made some observations which had the effect of interrupting the speaker, and diverting the attention of the meeting from his speech. One of the witnesses said there was no noise, but the questions and answers, and any unpleasantness that arose, was attributable to the intemperance of the defendant in leaving the chair, and going to the plaintiff, and saying that no person should put a question. One of the questions was, "What is to be done with the barley?" and the answer returned, "Give it to the pigs; they fatten pigs with it in America." This seems to have been considered a proper question: and the defendant having on such provocation given the plaintiff in charge to a policeman, had a verdict against him in an action for false imprisonment, damages 5*l.* *Wooding v. Oxley*, 9 Car. & P. I.

#### POWER TO MORTGAGE THE ESTATES OF INFANTS.

By the 1 W. 4, c. 47, s. 11, for "facilitating the payment of debts out of real estates," it is enacted, that where any suit hath been, or shall be instituted in any Court of Equity for the payment of any debts of any person or persons deceased, to which their heir or heirs, devisee or devisees, may be subject or liable, and such court of equity shall decree the estates liable to such debts, or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled in every such case, such court shall direct, and, if necessary, compel such infant or infants to convey such estates so to be sold, (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said

court shall think proper and direct; and every such infant shall make such conveyance accordingly, and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants, was or were at the time of executing the same, of the full age of twenty-one years.

It appeared doubtful whether Courts of Equity were empowered to order as well the *mortgage*, as the *sale* of real estates, in which infant heirs and devisees were interested. It was obviously desirable, in order to discharge debts, that there should be a power to mortgage, and the want of this power was attended with great inconvenience. Such power was also desirable, where estates were already mortgaged, and the transfer of which might prevent foreclosure, or effect a reduction in the rate of interest. Besides, the necessity to raise money for the payment of debts is frequently temporary, and the accumulations of income sufficient to discharge the incumbrance. A compulsory sale also was often injurious where local advantages to the infant might exist, if the property were retained.

The cases on this point were conflicting.

In *Holme v. Williams*, 8 Sim. 557, which was a creditor's suit, it was said that it would be beneficial to the devisees of the deceased debtor's estates, (some of whom were infants) that the money required for payment of debts should be raised by mortgage instead of sale of the estates; but a doubt was expressed as to whether the Court could, under 11 Geo. 4 and 1 W. 4, c. 47, s. 11, direct the infant devisees to join in conveying the estates to the *mortgagee*, inasmuch as that act does not, in express terms, authorise the Court to direct infants to convey estates, except where they are decreed to be sold for satisfaction of debts.

The Vice Chancellor said that a mortgage was, at law, a conditional sale, and therefore, he was of opinion that he had jurisdiction, under the act, to decree the estates of deceased debtors to be mortgaged for satisfaction of their debts, and also to direct their infant heirs or devisees to convey the estates to the *mortgagee*.

On the other hand, in the case of *Smethurst v. Longworth*, 2 Keen, 603, it had been ascertained that the personal estate of the deceased was insufficient for the payment of his debts; and an order had been made by the Court for raising the deficiency out of the real estate, which had descended on an infant heir.

The Master, to whom the matter had been referred, reported that it would be for the benefit of the infant, that the money should be raised by a mortgage, but he doubted whether a valid mortgage could be executed under the above act.

The *Master of the Rolls* was of opinion, that the act did not authorise a mortgage; observing that the words "sale or mortgage" would naturally have occurred, if the legislature had intended to authorise a mortgage of the infant's estate; and his Lordship referred it back to the Master to inquire what portion of the estate ought to be sold.

These doubts and the disadvantages consequent thereon, have been removed by the 2 & 3 Vict. c. 60, which we believe was suggested to the Lord Chancellor by Mr. Freshfield. That act extends the provisions of the 11 Geo. 4 and 1 W. 4, c. 47, and enables the Court to direct *mortgages* as well as sales of the estates of infant heirs or devisees, and it directs that the surplus money arising from such sales or mortgages, shall descend in the same manner as the estates so sold or mortgaged would have descended.

### CHANCERY REFORM.

THE cause of Chancery Reform, has, we are sorry to say, made no progress since our last. The illness of Lord Lyndhurst, and the absence of Lord Abinger and Lord Brougham, have prevented the discussion of the measure on the second reading of the Lord Chancellor's bill. We see no reason to change the opinion we have expressed, as to the measure, although we regret that the other bill for the reform of the Offices of the Court of Chancery, is not brought in forthwith. We understand that Sir Edward Sugden is engaged in a pamphlet in defence of his resolutions, and are glad of this, as we agree to almost all of them, although we cannot think that they may not be carried in part with advantage.

### OBJECTIONS TO ABOLISHING THE EQUITY EXCHEQUER.

Mr. Editor

I beg leave to make a few observations on the proposed Chancery Bill.

I am persuaded it is very unwise to abolish the *Equity Exchequer*, reducing all equity questions to one Court, substantially under one head—the Lord Chancellor, who presides also in the House of Lords. The subject has

always had, and should have, the election of two distinct jurisdictions. The healthful course of decisions can only be preserved by two or more independent Courts. It therefore appears to me that the *Equity Exchequer* should be preserved, but under a judge dedicated to equity alone. This I am convinced will act well, and much better than one great Court.

I also object strongly to the abolition of the *distringas*; it is a most useful and beneficial proceeding, and works well. It is in innumerable instances the unknown and secret protector of many valuable interests, and of great amount of funded property and stock.

Can the public be aware that the proposed new clause (which will, according to modern fashion, abolish the *distringas*), will have an effect on two thousand millions of property? Such is the amount of the funds, stocks, and shares in public companies. I am no friend to the latter, but I think this clause may give an inquisitorial and galling power over them, and interfere much with the free circulation of companies' shares, and the welfare of public companies. I think, therefore, the *distringas* should be left to its present practice.

Temple, 31st March, 1840. S. P.

### NOTICES OF NEW BOOKS.

*Practical Forms and Entries of Proceedings in the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas.* By Wm. Tidd, Esq. London: Saunders & Benning, 1840.

We noticed in a former number of the present volume, (p. 280) the first part of Mr. Tidd's new edition of *Practical Forms and Entries*. He has just published the concluding part, comprising several additional chapters, with an index, preface, and introduction. The index is very full and minute, and a model for imitation in all practical works requiring frequent and easy reference. The introduction comprises a general view of the proceedings in personal actions, but does not show the recent alterations. These however may be gathered from the preface, and the following summary of the various statutes and rules of Court there given may be useful to our readers:—

"The principal statutes, by which these alterations and improvements were made, are first, the 11 Geo. 4, and 1 W. 4, c. 70, 'for the more effectual administration of justice in England and Wales,' usually called the Administration of Justice act: 2dly, the 1 W. 4, c. 7, 'for the more speedy judgment and execution, in actions brought in the Courts of law at Westminster,' &c.: 3dly, the 1 W. 4, c. 22, 'to enable Courts of law to order the examination of witnesses upon interrogatories, and otherwise:' 4thly, the 1 & 2 W. 4, c. 58,

“to enable Courts of law to give relief against adverse claims, made upon persons having no interest in the subject of such claims;” called the Interpleader act: 5thly, the 2 W. 4, c. 39, “for uniformity of process in personal actions, in the Courts of law at Westminster;” 6thly, the 3 & 4 W. 4, c. 42, “for the further amendment of the law, and the better advancement of justice;” usually called the Law Amendment act: and lastly, the 1 & 2 Vict. c. 110, “for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.”

“The principal rules of Court, affecting the *practical forms* and *entries* of proceedings in the Superior Courts, are 1st, the rules in the Exchequer of Pleas, of Michaelmas Term, 1 W. IV.—1830; 2dly, the rules in all the courts, of Trinity Term, 1 W. IV.—1831, and Hilary Term, 2 W. IV., 1832; 3dly, the rules of Michaelmas Term, 3 W. IV.—1832; and 4thly, the rules of Hilary Term, 4 W. IV.—1834, and Trinity Term, 1 Vict. 1838. The rules of the Court of Exchequer were principally occasioned by the opening of that Court, and admitting attorneys of the Courts of King’s Bench and Common Pleas to practise therein, under the 10th section of the Administration of Justice Act, and by the transfer of suits of law thereto, under the 14th section of that act, from the Courts of Session of Chester, and Great Sessions in Wales: and they may be accordingly classed under three heads; first, respecting officers of the Courts, and their fees; secondly, points of practice, relating to matters over which that Court has a *peculiar jurisdiction*; and thirdly, the times and modes of proceeding in that Court, on the removal of causes from Chester and Wales.

“The rules of Trinity, 1 W. IV, and Hilary, 2 W. IV, are founded on the 11th section of the Administration of Justice Act, by which it is enacted, that ‘in all cases relating to the practice of the Superior Courts, in matters over which they have a common jurisdiction, it shall be lawful for the Judges of the said Courts jointly, or any *eight* or more of them, including the chiefs of each Court, to make general rules and orders, for regulating the proceedings of all the said Courts.’ The rules of Trinity, 1 W. IV, chiefly relate to the putting in and justifying of special bail; the shortening of declarations, in actions of *assumpsit* or *debt*, on bills of exchange or promissory notes, and the common counts; the delivery of particulars of the plaintiff’s demand, under those counts; the time for delivering declarations, *de bene esse*, and service of declarations in *ejectment*; the time for pleading; rules to plead several matters; and judgment of *non pros*, &c. The rules of Hilary, 2 W. IV, may be aptly termed the *uniformity of practice* rules, there being no less than one hundred and ten of them made for the express purpose of rendering the practice uniform: and they will be found to contain many very important regulations, calcu-

lated to settle and improve the practice of the Courts, and to render the proceedings therein more expeditious, and less expensive to the suitors. The rules of Michaelmas, 3 W. IV, appear to have been made in pursuance of the Uniformity of Process Act, 2 W. IV, c. 39, s. 14, by which the Judges are authorised and required, from time to time, to make all such general rules and orders, for the effectual execution of that act, and of the intent and object thereof, and for fixing the costs to be allowed for and in respect of the matters therein contained, and the performance thereof, as in their judgment and discretion shall be deemed necessary or proper.

“The rules of Hilary, 4 W. IV, consist of rules of *pleading*, as well as of *practice*. The former were made in pursuance of the Law Amendment Act, (3 & 4 W. IV, c. 42, s. 1) by which the Judges of the Superior Courts of Common Law at Westminster, or any *eight* or more of them, of whom the chiefs of each of the said Courts shall be *three*, are authorised, by any rule or order to be by them made, in term or vacation, to make such alterations in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings, in actions at law, and such regulations as to the payment of costs and otherwise, for carrying into effect the said alterations, as to them may seem expedient: These rules consist first, of general rules and regulations, applicable to all pleadings; and secondly, of such as relate to pleadings in the actions of *assumpsit*, *covenant*, *debt*, *detinue*, *case*, and *trespass*, only: The practical rules chiefly relate to *demurrers*, and proceedings in *error*; and contain provisions respecting the admission of written documents. The rules of Trinity, 1 Vict., which were also made in pursuance of the power given to the Judges by the Law Amendment Act, chiefly relate to the payment of money into Court; the mode of pleading the general issue; and the necessity of pleading payment, or giving it in evidence in reduction of damages.

“By the foregoing statutes and rules of Court, many of the *practical forms*, and *entries* of proceedings, in the Superior Courts were abolished, or rendered obsolete, and others materially altered: in addition to which, some new forms and entries were framed by the legislature and the Judges, to give effect to the various provisions of the statutes and rules before mentioned. The Courts of Session and Exchequer of Chester, and of Great Sessions in Wales, being abolished by the Administration of Justice Act, the forms relating to the proceedings in those Courts have consequently become obsolete. Some rules of the Courts in particular cases, which were considered unnecessary, have been also abolished; others, which were formerly drawn up on the signature of counsel, may now be obtained on the application of the party, or a Judge’s order; and several, which were formerly rules *nisi* in the Common Pleas, are directed in future to be absolute in the first instance. The old forms of process, for bringing the defendant into Court

being abolished by the Uniformity of Process Act, new forms were substituted by the legislature in lieu thereof, which are contained in a schedule annexed to that act: and the rules of Michaelmas, 3 W. IV, which were made in pursuance thereof, contain forms, framed by the Judges, as to the mode of entitling and commencing declarations, and also writs of *distringas* and *capias* to the county palatine of Lancaster: and there is a schedule annexed to the rules of Trinity, 1 W. IV, containing forms of counts in declarations on promissory notes and bills of exchange, &c. and directions respecting them.

"In the *pleading* rules of Hilary, 4 W. 4, reg. 17, there is the form of a plea of payment of money into court; which rule is repealed by the rule of Trinity, 1 Vict. and another form given in lieu thereof; and in the *schedule* annexed to the Law Amendment Act, there are forms of *issues*, *judgments*, and other proceedings, in actions commenced by process under the Uniformity of Process Act; and the form of a general notice, requiring the adverse party to admit the execution of documents specified in the schedule: And lastly, it having been enacted by the statute 1 & 2 Vict. c. 110, s. 20, that "such new or altered writs shall be sued out of the courts of law, &c., as may by such courts be deemed necessary or expedient for giving effect to the provisions thereinbefore contained, and in such forms as the judges thereof shall from time to time think fit to order;" forms of writs were framed by the judges, in pursuance thereof, in Hilary Term 1839, and Hilary Term 1840, of writs of *clegit, fieri facias*, and *capias ad satisfaciendum*; on judgments and orders of superior and inferior courts."

*The Lawyer's Common Place Book, with an Alphabetical Index of upwards of Seven Hundred Heads which occur in General Reading and Practice.* London: E. Spttigue.

THE utility of this work is shewn by the following quotation from "The Articled Clerk's Manual":—

"We think a Common-place Book is an essential appurtenant of the student; of what its contents should consist there may be different opinions. The following, it is hoped, may furnish some hint, and be capable of improvement.

"Nothing should be literally extracted except a short sentence, which cannot be abridged, or the importance of which turns upon the precise words used. In all other cases the passage should be either abridged or referred to, and not transcribed. It is manifestly of the greatest use to know readily where to find what we require, instead of recommencing the search for it. The principal rule will be to condense as much as possible. For this purpose the attention will be especially aroused. It may be argued, that merely to copy is somewhat of a mechanical operation, and the mind

may from time to time wander far away from the subject: but in order to form an abstract of an important doctrine or decision, or point of practice, the student must necessarily make himself master of it; and this is the very object which is sought to be obtained."

The book is very well "got up," and we have no doubt the student who diligently uses it will have reason to rejoice in his labours. We recommend the publisher to interleave the Index; as some of the heads of reference will require more space than the printed pages afford.

## PROGRESS OF LEGAL EDUCATION IN IRELAND.

OUR attention has recently been directed to the progress of legal education in the sister kingdom. It appears that Lord Morpeth, as secretary for Ireland, was waited upon by Mr. Tristram Kennedy, the principal, and a deputation, from the Dublin Law Institute, accompanied by several members of the House of Commons, identified with the advancement of legal education, and the cultivation of professional studies, amongst whom was Mr. Wyse, chairman of the Select Committee on Education in Ireland, Mr. Lynch, Mr. Tenant, Mr. Serjeant Curry, and several other members.

Mr. Wyse called the attention of Lord Morpeth to the total want of system in legal education which existed in Ireland up to 1838, the only country in Europe, so circumstanced, at the period the Select Committee on education made their report. He also called to his lordship's recollection the recommendation of that committee for the establishment and maintenance of a law school in Ireland, in order to meet a deficiency so generally admitted to exist, observing that the only attempt which had been made upon the suggestion of the committee originated in the founders of the Dublin Law Institute, an establishment now in active operation under the sanction of the most distinguished members of the Irish Bar, affording preparatory and practical instruction in detail to eight classes of students, under the regular and immediate direction of four highly approved professors and two assistant lecturers. Mr. Wyse stated to his Lordship that the object of the deputation, and those who accompanied him, being to obtain a charter of incorporation for the institution, in order to perpetuate a system of legal education in Ireland, he felt confident no objection could be offered—more particularly as it was not the desire of those who sought the charter to render attendance imperative at this school in order to entitle the student to admission into either branch of the profession,—leaving such attendance perfectly voluntary on the part of the student.

Lord Morpeth expressed his opinion to be most favourable to the views and objects of

the deputation, but suggested the propriety of having the opinion of the Chancellor and law officers in Ireland upon the subject before pledging himself to any course.

We have watched with particular interest the progress of this highly creditable institution from its origin. The plans and course of instruction adopted in the school we have carefully investigated, and the particulars of which were given in a former number. We are aware that the system has met with the strongest approbation from many of the law professors in London, and we conceive the entire course reflects credit on those who have regulated the system of study in its respective departments, evincing, as it does, intimate acquaintance with the plans followed in the three institutions in London, where the study of the law is cultivated.

The question for the government to consider is not whether a good law school in Ireland would be useful, for that has been well established by the founders of the Dublin Law Institute. The question, if there be one, is, whether any purposes are likely to be answered by incorporation, which are not equally answered by an unincorporated association. We feel that a charter would excite alike a laudable perseverance on the part of the founders, the professors, and the promoters of the institution. It would awaken public attention, and encourage the study of the law as a science. It would raise the tone of professional thinking, and increase the value which should attach to professional knowledge. It would secure permanence and improvement to a system, the absence of which may have excited sufficient interest to originate and found, but which, however good in itself, may require countenance to perpetuate. For the present we take leave of this valuable institution, wishing it the success to which it is entitled.

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## REGULATIONS OF THE DIVORCE COMMITTEE.

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We have already stated that divorce bills, in their passage through the House of Commons, are now referred to a select committee of nine members instead of a committee of the whole house, (see ante, p. 290). The Select Committee have made the following regulations:—

1st. That two days before the sitting of the committee on any divorce bill, a print of the bill and a copy of the evidence adduced, previous to the second reading of the bill in the House of Lords, be furnished by the agent for the bill to each member of the select committee, in cases in which the evidence has been printed for the use of the Peers; but where the evidence shall not have been printed, then a manuscript copy is to be furnished within the same period to the chairman only; but in all cases the evidence communicated by the House of Lords is to remain with the committee clerk from the time of the commitment of the bill,

and to be open to the inspection of every member of the committee; and the committee clerk is to give four days' notice of every meeting of the committee to the several members thereof.

2d. That the agent be required to prove service upon the party from whom the petitioner seeks to be divorced, of a copy of the bill and of the order of commitment, and order for the attendance of parties, witnesses, counsel and agents; also to produce examined copies of the judgment in the action at law, and of the judgment in the action in the Ecclesiastical Court, except in those cases from India, in which evidence of the judgments in an action of trespass and in the suit for a divorce is included in the proceedings transmitted from thence, in pursuance of the act 1 Geo. 4, c. 101, "To enable the Examination of Witnesses to be taken in India in support of Bills of Divorce on Account of Adultery committed in India."

3d. That in all cases in which the bill is opposed and the facts contested (except cases provided for by the said act of George 4), the preamble will be required to be proved according to the laws of evidence, in the same manner as if the case had been heard at the bar of the House, under the system existing previous to the session of 1839.

4th. That in all cases which are not opposed, or where the facts are not contested, the agent will read to the committee, from the official copy of the evidence received by the House of Lords and referred to the committee, such testimony as shall appear to him sufficient to establish the preamble of the bill; but the committee will be entitled to require, as well in opposed as in unopposed cases, that any further part or the whole of the evidence so referred shall be read, or that additional evidence be adduced.

5th. That in all cases in which the petitioner for the bill has attended the House of Lords upon the second reading of the bill, he be required to attend also to answer any questions the select committee may think fit to require that he should answer.

*J. W. Freshfield, Chairman.*  
16 March, 1840.

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## THE STUDENT'S CORNER.

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### MERGER OF TERM.

Sir,

In answer to your correspondent "An Articled Clerk" with reference to a case proposed by him in page 315 of your present volume, I beg leave to make the following remarks. The case is this. "A. conveys to B. for valuable consideration; the draft is by mistake drawn to and to the use of C., in trust for B. the purchaser. After which follows an assignment of an outstanding term from D. to C., in order to merge. The engrossment is subsequently altered, and the conveyance executed 'to C. to the use of B.' But the assignment of the term remains." The question is, whether C.

has a sufficient estate to merge the term, so that the whole may pass under the limitation of use to *B*." Now in order to gain a clear conception of the matter in dispute, it is my opinion reference must be made to the operation of the gift prior to the Statute of Uses, a source from whence many of the most intricate and perplexing questions arising out of the statute have been repeatedly unravelled and explained.

Before the statute the limitations would stand in the order they now do, by the alteration in the engrossment, (the assignment remaining as above); viz. from *A*. to *C*. to the use of *B*; here clearly, before the statute, *C*. is legal owner or feoffee, and *B*. the equitable owner or *cestui que use*; *C*. by the conveyance becomes seised of the legal fee, and by the assignment, possessed of the legal term, which union of the two estates in him induces and compels a merger. As the tendency, and in fact essence, of a merger (as the name imports) is the drowning and complete extinction of the lesser in the greater or subsequent estate, it follows as a consequence, both upon reason and principle, that to the interest of *B*., the *cestui que use*, the separate existence of the two estates is unknown, and as though they had never existed. And it could not in strict propriety or technical accuracy be said, that *B*. was entitled to the equity of the term, and the equity or use of the fee, as distinct and separate, but rather that he was entitled to the equity of the whole as consolidated by the union in *B*. And moreover, the estate, both legal and equitable, would pass in any subsequent devolution or alienation, undivided and entire, the combination being so complete and forcible in the contemplation of law and equity as to require the same means and power to dissever as were used to create it.

If such then be the case before the statute, how does it stand now? The statute transfers the possession to the use, or, in other words, affixes on it the legal estate, adjudging the "*cestui que use* in lawful seisin, estate, and possession of the lands, &c., in such like estate as he had or should have in use, trust, or confidence of or in the same." The effect of this plastic energy of the statute is nothing more than to consolidate and make corporeal the use, to constitute it legal instead of equitable, to draw out the estate of the feoffee or releasee, and execute it in *cestui que use*. It alters not therefore the quantity of the estate of the *cestui que use*, neither does it diminish it or the legal incidents pertaining to it for the time being in the feoffee. The estate receives its legal confirmation and adjustment in the feoffee. For does not he still take an estate in fee? Do not the estates in question vest and unite in him now as before the statute? Does not the legal attribute of merger attach on them now as before? Is not the only difference that their time of abode in him is interrupted and contracted? And are they not transferred from him by the operation of the statute in their incorporated and whole condition? That he does take a legal estate, and that the estates in

question do vest in him, is certain: else how could they be drawn out of him? And if the momentary residence of the seisin in the feoffee or releasee is sufficient (as must be admitted by all who do not subscribe to the doctrine of *Scintilla juris et titule*, with all its metaphysical subtleties and refinements) to impress it with all the uses and confidences, either future, springing, or contingent, which it might afterwards have to supply ulterior to its execution in the party in esse to receive it, is there any plausible reason for doubting the sufficiency of that temporary locality to subject the estates in him (the feoffee or releasee) to the operation and consequence of a merger, and thus furnish an answer as well to the 3rd as to the 5th of the above queries, which is solely dependent upon the 3rd, the 4th being self-evident. If these premises be correct, it is clear that the term in the case before us passes as a part, an undivided and indefinite part, of the whole; because swallowed up and extinguished in the whole under the limitation to *B*. And the reservation in the statute mentioned by your correspondent as to termors for years can have no bearing on the matter here, that admitting and contemplating the term as a distinct disjointed estate, and not incorporated into another by the operation of what may be called a species of legal attraction under the technical name "merger."

## X. X.X.

Sir,

In endeavouring to reply to the question put by your correspondent, "An Article Clerk," (p. 315, *ante*), whether, under the circumstances of the case stated, *C*. has a sufficient estate to merge the term, so that the whole may pass under the limitation of use to *B*.; or whether, as your correspondent himself is "rather inclined to think," the legal estate in the term remains in *C*., in support of which latter view he quotes the *express averring* in the statute of uses in favor of termors for years. I shall begin by citing, upon this *averring* the language used by the learned author of "A Practical Treatise on Conveyancing," in his 3d vol., which relates entirely to the question of merger; and who says, (p. 349), "this provision of the statute (of uses) extends to all cases in which a conveyance is made to any person for the purpose of raising uses on the estate conveyed to that person. All the cases which have arisen on this statute, as well as the words of the statute itself, prove that there is an exemption from merger under this statute in those cases only in which the owner of the term or particular estate is the instrument immediately or immediately for raising the uses, so that the uses are to arise out of the estate conveyed to him.

I would next remark, that the case of *Cheeny*, reported 4 Leon. Moor. 106, pl. 345, which was the first decided after the statute passed relative to this provision of it, of which we have any report, lends its aid in support of the above view of the question. As to the class of cases to which allusion is made by your

correspondent, wherein an estate passed into a person and out of him immediately again, under the old law of fines and recoveries; of these I may cite that of *Sir John Ferrers and others v. Sir Richard Fermor and others*, Cro. Jac. 643, and also *Fountain v. Cook*, 1 Mod. 107, which latter was a case of the lessee of a term for years being made tenant to the precipe for suffering a common recovery; and whilst speaking of the effect of the mere conveyance in the case put to C., as releasee to uses or "conduit pipe," I may cite the language of Lord C. J. *Tindal* in his judgment in the case of *James v. Plant*, 4 Ad. & Ell. 749, first premising that the point to be decided there was—whether a unity of seisin of a piece of land, and of a way over that land, in one and the same person, extinguishes or suspends the right of way? It so happened that, in this case, two estates had been conveyed with a view to a partition by coparceners, to one and the same trustee; but, as to the estate over which the right of way ran, the conveyance made to him was as a "mere releasee to uses only." In this respect therefore the trustee there stood in precisely the situation as C. does in our present case, and on this the learned C. J. observes: "With respect to such releasee, it is a known doctrine, that since the statute, he takes no interest whatsoever in the land: that, on this account, it can neither escheat nor be forfeited, nor is it subject to dower or curtesy, on account of his momentary seisin, and we know of no authority, and without it there is no reason, for holding that such momentary seisin of the land shall operate to extinguish a right of way by unity of seisin." I need scarcely remark how much your correspondent's argument "by analogy &c." as he has termed it, is corroborated by this. In perfect accordance with the view we are now taking of this provision of the statute, are the remarks of another learned author on Real Property Law, Sir Edward Sugden, who, in his last valuable edition of Gilbert's *Uses and Trusts*, says in a note to p. 183, (3d. Edit.) "The statute has a provision which saves to feoffees &c. to uses, all such former rights as they might have had to their own proper use: therefore if a termor for years be made a feoffee to uses, his term is saved by the statute and not merged, and it is not material that the termor holds the lease in trust; the same rule must, it is conceived, prevail even where the conveyance is by lease and release.

After what has been above stated, I could have had no hesitation in acquiescing in your correspondent's suggestion, that in the case put "the legal estate in the term remains in C." and was saved from merger; but that the term, as it would appear from the language of your correspondent, was assigned to this releasee to uses, C. "in order to merge." It must be ascertained therefore how far the matter is affected by this expression of intention, if, as is stated in the case of *Morris v. Edgington*, 3 Taunt. 24, by Lord C. J. *Manfield*, "All deeds are to be most strongly taken against the maker;" and if, as seemingly is the

fact, courts of law will not give their sanction to any construction of a conveyance contrary to an expression of the object and intent as strong as existed in this case; bound as these courts always consider themselves to be, to give full weight to what is actually expressed by parties to a deed, as being best calculated to explain their meaning: I am compelled to come to the conclusion that C. took "under the conveyance, an estate sufficient for the purpose of merging the term;" that the term in fact, was a merger at law, and "the whole must pass under the limitation of the use to B." For it is clear the exceptions in favour of those who have an instantaneous or temporary seisin are allowed on equitable grounds; and Mr. Preston, from whose work I have already quoted, states in his 12th chapter, p. 273, explicitly, that the exemption which arises in those cases which (independently of the saving in the statute which we have been discussing) are within the exception of the law on the merger of estates, does not apply between trustees and cestui que trusts, and that though both estates may be held by the same person on the same trusts, the doctrine of merger will operate on these estates. For "as to legal estates (he continues) the exception to the application of this doctrine, extends to those instances only in which one person has the legal ownership of several estates in different rights, viz. one in his own right and the other in another right, and in which the law, as distinguished from equity, takes notice of these different rights." "Over the beneficial ownership under the trust, Courts of Equity alone have jurisdiction." Supposing therefore the merger to be complete at law, the relief in the case put, must lie in equity; but this is a question into which I cannot enter fully here, and will only further observe, that if the definition Mr. Preston in one part of his work gives of merger be strictly correct, viz. that it is the conclusion of law from the supposed intention that two estates should not exist distinctly," it is perhaps scarcely to be expected that equity will interpose under circumstances like the present, when we are not left to conjecture or to suppose the intention alluded to, but have a decided expression of the intention that two estates shall merge and not exist distinctly.

T. H.

## SELECTIONS FROM CORRESPONDENCE.

### POWER COUPLED WITH INTEREST.

*To the Editor of the Legal Observer.*

Sir,

In endeavouring to solve the questions raised by your correspondent "F." p. 406, *ante*, I shall take the liberty, after disposing of his first query, of observing upon the rest of them, in an order somewhat differing from that in which he has put them. I shall, then, only remark, as to the first query, that there can be

no doubt that the devise to *G.* and *M.*, as it stands originally, conferred on them the legal fee, as there are sufficient words of limitation, "and to their heirs and assigns for ever." The words added to the devise too, constitute a full and indisputable trust for sale, which it is clearly admitted by the authorities will survive.

I propose next to reply to the second and fourth queries, which are in these terms: "As the said first codicil was executed in the presence of two witnesses only, was it not inoperative as a revocation of the appointment of *M.* as trustee? And "If the second codicil was inoperative for want of being properly executed, was it not set up by the words of confirmation in the third codicil?" I might refer to the case of *Moneypenny v. Bristow*, 2 Russ. & Myl. 117, and the cases cited in it, as to the general rule that a codicil duly attested amounts to a republication of a will; but I think the cases of *Utterson v. Robins*, 1 Adol. & Ell. 423, and *Gordon v. Lord Reay*, 5 Sim. 274, are both so much in point that I may cite them as answering the last above-mentioned (or fourth) query in the affirmative, and therefore the fact to which the second query points is of no further moment.

Having thus established that *H.* is by the effect of the second codicil duly appointed a trustee in *M.*'s stead, we come to the third query, whether such appointment was "an effectual substitution of *H.* in the place of *M.*, considering such substitution was not accompanied with an express devise to *H.*?" In other words, did the legal estate in fee in the property devised by the will which we have above considered the terms of the devise clearly conferred on *M.*, jointly with *G.*, vest in *H.* without any devise? And this I think I may venture to answer also in the affirmative, under the authority of the case of *Anthony v. Rees*, 2 Cro. & Jervis 75. In that case it is observable, there was no actual devise of the estate any more than in the case now in question, the trustees being in fact appointed only as "trustees to look that justice should be duly administered between the said parties." The trustees in that case had only to pay 10*l.* yearly and every year out of a freehold to the wife of the testator, and the language of Lord Lyndhurst, C. B., is as follows: "Now the trustees cannot perform the duties imposed on them, unless the legal estate is vested in them." *Bailey*, B. puts the case (so far as our present purpose is concerned) on still more satisfactory grounds; for, after observing "When trustees are directed to do any thing, for the performance of which the legal estate is requisite, then they are to have the legal estate;" he adds "Upon the whole, I entertain no doubt that the legal estate was vested in the trustees, it being necessary for the performance of their duties." *Bulland*, B. concurred, and for the same reason. Now, we have only to look into our case, and we shall at once see how exactly applicable these remarks are to the trustees *G.* and *H.*; and I cannot doubt that upon this authority and that of other re-

ported cases which might be adduced to the like effect, the legal estate in the real property of our testator was vested in *H.* (the substituted trustee) jointly with his co-trustee *G.*, up to the decease of the former (*H.*), and that upon this event the entire legal estate became vested in the latter.

It remains only to determine whether, according to your correspondent's fifth query, it be "clear that the conveyance by the trustee *G.* and the testator's said eldest daughter was sufficient." I think we may assert, after what has been observed above, that in a court of law *G.* would be considered as enabled to make a good title to the legal estate in the premises sold; and as little doubt can there be, that, under the trust for sale, and with the consent of the testator's daughter *S. G.*, evidenced by her concurrence in the conveyance, he can make a complete title to the equitable estate therein. The only possible question which, in my mind, could be raised is this: How far the testator's not having (when in the second codicil of 1816 he directs *G.* and *H.*, with the consent of his daughter, to sell all his real estate &c.) repeated the direction which he added to the similar trust for sale created by his will; viz. "that the receipts of his said trustees and of the survivor of them, and of the heirs &c. of such survivor shall be good discharges to the purchasers," &c., is material as far as regards the full and complete discharge of the purchaser for his purchase-money. But I confess, that as to this, I feel satisfied, looking at all the instruments together, a Court, taking into consideration, as they always do, the apparent intention of the testator, (fully expressed indeed in his will, though not in the second codicil) would certainly hold that, on the whole, the power to give effectual receipts still remained to the surviving trustee who sold.

T. H.

#### EDUCATION OF ARTICLE CLERKS.

Sir,

Having ever had the reputation of an incorrigible idler, it should seem highly presuming in me to trouble you with any remarks on the conduct or compositions of confirmed "wisdom or sensible suggestion," were it not that I have also been lauded for some discernment in matters that I have voluntarily taken under review. It may, Sir, have surprised others with myself that among the many salutary admonitions you impart for the government and guidance of attorney's clerks, preparatory to the practice of their profession, few, if any of your criticisms should ever have extended to the condemnation of the present mode of passing that most pleasant period! Fearful of a seeming want of deference to those whose course of conduct appears to me to be open to your censure, who in many cases, have attained an age which an "idle," classic knows the Greeks respected and the Romans reverenced, I shall barely state, what, from my limited observation and experience, I deem deserving your consideration and rebuke. It is briefly this—When

ther the whole of those official monotonies, which the routine of an office requires an embryo attorney should undergo, be not, as relative to the nature of their end, inconsistent, not only with the educational views of a rational logic, but at variance with the common-sense perceptions of an ordinary understanding on the subject? Should this, Sir, be, might we not by an examination into the causes and origin of this existing evil, find room for re-modelling and reforming their tendency and operation? On this point your hints are respectfully solicited. I venture not to offer mine,—not merely for the reason above advanced, but from my consciousness of the calmness and comprehensiveness required for its solution and development,—a comprehensiveness I am excluded from possessing by the unscientific system which is offered to your reprehension. Were my propositions to be proved, such writers as "Old Subscriber" would remain quiescent. His proposals were gratifying, inasmuch as they unveiled a prospect of acquirements gained under previous arrests of one's attention becoming practically profitable; but I found a remote parallel to their impracticability near at hand in one of the authors to whom he alluded. The resemblance to which I refer is to be found in the fourth Theorem of Euclid's first book, where I need not remind you the impossibility of the hypothesis is reducible *ad absurdum*.

These are the comments a few leisure moments from more pleasant pursuits induced me to make, on what I see have been already termed the "conduct of confirmed wisdom, and the compositions of sensible suggestion." In passing I might tell your "A. W. O." correspondent that the rewards at the Pythian games, on the authority of Pausanias, were the leaves of fruit trees; green and dried parsley at the Nemeian and Isthmian respectively, and therefore "laurel" at none but the Olympic.

In conclusion, Sir, allow me to regret, if I have not expressed myself with that diffidence which should attend the too-often trivial reasonings of youth, or been wanting in that deference to the doctrinal mode now in use, that a more profound knowledge of the principles of the law might originate and cement. Trusting the agitation of so important a subject may not be suffered to subside,

#### AN IDLE ARTICLED CLERK.

[A note from our "Idle Correspondent" justly describes the contents of this letter as somewhat too vaguely worded, and the suggestions as too much generalised. It seems to be a paraphrase, something after the manner of Jeremy Bentham, on the old complaint against "the drudgery of an attorney's office." Ed.]

#### ESTATE PUR AUTRE VIE.

Sir,

Can you or any of your correspondents inform me whether a devise of an estate *pur autre vie*, limited to the testator, his executors,

administrators and assigns, will vest the estate at once in the devisee? or whether he will have to take a conveyance of it from the executors? I should have imagined that the case of *Ripley v. Waterworth*, 7 Ves. jun. 425, had settled this point; had I not heard a Barrister the other day assert, that in such a case the estate was in the executor, and not in the devisee. It may perhaps be as well to add, that in the case to which I allude, the estate *pur autre vie* was included in the devise of the residue of the testator's estate; but this cannot make any difference.

#### A COUNTRY READER.

#### TRIAL OF DEFENDED CAUSES IN TERM.

Mr. Editor,

The allowing any other than *undefended* causes to be set down in term, produces great inconveniences to the suitors, who are thereby deprived of the assistance of the Queen's Counsel, as these learned personages (although retained) will not quit the Sittings in Banco to attend the Lord Chief Justice at *Nisi Prius*. The whole system requires regeneration.

CIVIS.

#### ASSIGNABILITY OF GOVERNMENT PENSIONS.

The important question involved in the case of *Tunstall v. Boothby and others*, reported p. 380, ante, has induced us to enquire more fully into the circumstances, and we are enabled to make the following additions to the former report, the facts of which we find are perfectly correct as far as they go. But as some matters of importance were omitted, the report of the case may have greater weight than what transpired in Court on the motion would justify; we think it right therefore to put our readers in possession of the following particulars.

First then, the notice of motion was for an injunction to restrain the defendant Sir W. Boothby from paying over to the defendants, Charles Asprey and John Chart, (assignees of an insolvent debtor) or either of them, or any person or persons by their or either of their order, or to their or either of their use, or to the defendant, W. R. Browne, (the insolvent debtor), or to his order for his use, any monies then being in his Sir W. Boothby's hands for answering the *arrears due and payable* of the compensation allowance of 500*l.*, &c.; and it concluded with "and that it be referred to the Master to appoint a fit and proper person to be the receiver of the said compensation allowance, and the arrears and growing payments thereof."

Thus, the injunction asked for was to restrain Sir W. B. from paying over any monies then in his hands for *arrears only*; and the most important part of the motion was, to obtain a receiver of the compensation as it becomes due, in order that the Court might take possession of the fund.

The Vice Chancellor intimated, during the opening speech of the plaintiff's counsel, that there could not be any question raised as to the assignability of a mere expectancy; and from this he came to the conclusion that this compensation, being payable *during pleasure*, would not prevent assignability being supported in a Court of Equity.

This may be very well as an abstract principle of law, but then comes this question—Can a compensation pension of this nature be practicably assignable against the will of the grantors, who pay it only *during pleasure*, and have entered a minute in their books that they will not recognize assignments of pensions?

As to this, the Vice Chancellor intimated an opinion that he believed the pension to be entirely under the control of the Lords of the Treasury and the Commissioners of the Customs; and he declined on this ground, as well as on the ground of their not being parties to the suit, to make any order which would affect them, although much pressed by the plaintiff's counsel so to do; and he also refused to make any order for a receiver, but gave liberty to Sir W. B. to pay any monies then being in his hands into Court.

From this, and on perusing the report as to the order made, to which is annexed the condition, unless the Lords of the Treasury or the Commissioners of Customs make order to the contrary, it will be perceived that the Lords of the Treasury or the Commissioners of Customs may order Sir W. Boothby to pay the compensation to the defendants, Asprey and Chart, notwithstanding the injunction; and as Sir W. Boothby has no authority to pay over the compensation without the order of the Commissioners of Customs, whose servant he is, the injunction is quite nugatory.

The decision also that the Court had not power to make a compulsory order for payment of the compensation, by appointing a receiver, is also quite conclusive against the practicable assignability of a compensation allowance of this nature.

In further illustration of this important feature in the case, it may be as well to state the nature of the orders of the *Insolvent Debtors' Court*, which are merely referred to in the report of the case,—as those orders are made by virtue of an act of the legislature, which makes the consent of the grantors through the Commissioners of Customs, necessary before the assignees can claim any title to such a compensation allowance.

The substance of the section of the act of parliament is, that the assignees shall not, by virtue of the act, be entitled to pensions under any department of the government; but it gives power to the Insolvent Court to recommend to the Commissioners of Customs that a portion of such pension should be paid to the assignees, and upon the commissioners assenting in writing thereto, the Insolvent Court has power to order the payment to be made to the assignees until further order of that Court.

This consent had been obtained by the assignees in this case, and the orders made accord-

ingly. It seems rather anomalous that assignees for a body of creditors should be precluded from having the benefit of an assignment of such a pension without the consent of the grantors, and that an assignee by private deed should have the benefit of such an assignment, against the will and express dissent of the grantors. This, the decision of the Vice Chancellor plainly shews, he cannot practically do, although he may have decided that, as an abstract principle of law, as stated in the heading of the report, at p. 380, an assignment of a pension of this nature is valid in a Court of Equity.

There is also a point in the report, as to notice of the assignment at the Audit Office being sufficient to take the pension out of the order and disposition of the insolvent: on this it may be observed, that it is not clear whether the nature of the entry at the Audit Office was sufficiently explained to the Vice Chancellor. The entry is merely a private entry, made to assist the clerks at the Audit Office in checking the public accounts, as to payments made under powers of attorney or other documents recognized by government; and the entry is mostly required to be made there before the receiver-general makes a payment under any such document, to prevent delay when his accounts come to be passed, which might arise if the entry were not previously made; but such entry is wholly useless, unless payment be made under the document entered, and is never referred to. The proper notice should be to the department of the government service where the pension is payable, and where alone proper information can be obtained relating to it, or its liability to incumbrance.

## SUPERIOR COURTS.

### Queen's Bench.

[Before the Four Judges.]

#### MANDAMUS.

*Where a disputed right to an office can be conveniently tried on a return to a mandamus, the Court will direct that writ to be issued, though an action of money had and received would lie.*

*The fact that such an action will lie is not of itself sufficient to prevent the issuing of the writ.*

In this case a rule had been obtained for a *mandamus* to be issued to the defendants, commanding the commissioners to admit into the office of Clerk of the Small Debts Court at Boston, a person named Staniland. Mr. Hopkins had been elected under the old corporation, the members of which claimed to be trustees under the local act creating the Court. Mr. Staniland had been elected by the town council, who contended that in this, as in other matters, all the rights which had formerly been vested in the mayor and corporation had,

since the passing of the Municipal Reform Act, been vested in them.

Sir W. Follett and Mr. Byles shewed cause against the rule, and after arguing upon the effect of the provisions of the Municipal Corporation Act, they insisted that the rule must be discharged, as the applicant here had another mode of trying the question he meant to raise; and that even if a *mandamus* would lie on a case like the present, it would not lie where there was another specific remedy. *The King v. Wyndham*,<sup>a</sup> *The King v. Chester*.<sup>b</sup> The question here was a disputed right to an office, and as the officer was in the receipt of fees, money had and received would lie.

Sir F. Pollock, in support of the rule, was stopped.

Lord Denman, C. J.—It used to be said that where money had and received would lie, a *mandamus* would not be granted; but that is not so now, and the question in this case may be conveniently tried on the return to a *mandamus*. Many of the grounds which formerly restrained the Courts in granting writs of *mandamus*, have, since the passing of Lord Tenterden's Act, (1 W. 4, c. 21) ceased to be of the same importance.

Rule absolute.—*The Queen v. Hopkins and the Commissioners of the Small Debts Court at Buxton*, H. T. 1840. Q. B. F. J.

#### SUGGESTION.—COSTS—SCIRE FACIAS.

Though the entry of a suggestion on the roll may be sufficient to charge a person already a party to the record with a liability to costs, greater than he would be subject to in ordinary cases, yet where the object is to enforce a judgment against a person not already by name a party to the record, a *scire facias* must be issued.

In this case an action had been commenced, and a verdict obtained, against the defendant, the treasurer of the Leamington Joint Stock Bank, under the provision of the 7 Geo. IV, c. xii, under which that Bank was formed. The plaintiff desired to enter a suggestion on the roll, stating the facts, and shewing that other persons were in fact the partners in that bank, and were as such really liable in the action, the secretary being merely a nominal defendant, and on this suggestion the plaintiff sought to be allowed to issue execution against certain of these alleged partners.

Mr. Hayes, in support of the motion, cited the case of *Bartlett v. Pentland*.<sup>c</sup> There the plaintiff had obtained judgment against the defendant, as secretary of the St. Patrick Assurance Company, and afterwards, without entering any suggestion on the record, issued execution against a third party, as a member of that company, and this Court set aside the execution as irregular, on the ground that the party sought to be charged ought to have had an opportunity given him to demur, should he object to the ground on which his supposed

liability was vested. Here the plaintiff had done all that was in that case deemed necessary.

Mr. Chilton, for the defendant, answered, that that case only shewed that issuing execution without a suggestion was not sufficient, but did not shew that a suggestion alone would be enough, and he contended that where a party not already on the record was sought to be affected the proceeding ought to be by *sci. fac.* which alone afforded him a proper means of shewing that he was not legally liable to a demand of this sort. *Penoyer v. Brace*,<sup>d</sup> where it was distinctly laid down that where there was an alteration of the record, or a new person made liable to the judgment, a *scire facias* must issue, was in point, and must govern the Court in deciding on this application.

*Cur. adv. vult.*

Lord Denman now delivered judgment.—After having stated the facts of the case, his Lordship observed:—The case of *Bartlett v. Pentland* was cited, where it was said that the entering a suggestion on the roll had been held to be sufficient for the purpose of issuing an execution against a member of a company, against whose secretary, on behalf of the company, a verdict had already been recovered. We adopt to the fullest extent the rule there laid down, that no execution could be issued without a suggestion or some proceeding of that sort being first adopted. But, further, we think that if a party means to charge any other defendant than the person who has nominally been the defendant on the record, he must have a *scire facias* for the purpose. We are of opinion, that though a suggestion may be entered on the roll for the purpose of obtaining in a manner different from the ordinary one, costs as against a party to the record, and it is to that point that the cases cited in *Bartlett v. Pentland* are chiefly directed, yet wherever it is sought to enforce a judgment against a person who is not already by name a party to the record, we agree with the opinion distinctly expressed by Lord Holt in *Penoyer v. Brace*, that a *scire facias* is necessary. The rule, therefore in this case will be discharged.

Rule discharged.—*Bosanquet v. Ransford*, H. T. 1840.—Q. B. F. J.

#### Queen's Bench Practice Court.

##### CHANGE OF VENUE.—BRIBERY.—PREJUDICE.

In an indictment for bribery, where it appears that the conduct and character of the defendant have been made the subject of frequent severe comment in newspapers, generally circulating in the county wherein the trial is to take place, the court will change the venue.

This was an indictment against the defendant for bribery, at the late election for Cambridge. It charged the defendant with having

<sup>a</sup> 1 Ld. Raym. 244.

<sup>b</sup> *Hickman v. Colley*, 2 Stra. 1120; *Barney*

<sup>c</sup> *Tubb*, 2 H. Bla. 350; *Rea v. Poland*, 1 Str. 49.

<sup>a</sup> Cowp. 378.      <sup>b</sup> 1 Term Rep. 396.  
<sup>c</sup> 1 Barn. & Adol. 704.

given a bribe to George Smith, in order to induce him to vote for Mr. Manners Sutton, one of the candidates for the borough of Cambridge. A plea of not guilty had been pleaded, and the indictment stood for trial at the Spring Assizes for the county of Cambridge.

Kelly, moved for a rule to shew cause why the venue should not be changed from Cambridgeshire to Middlesex. He produced an affidavit, which stated that the election had created a very hostile feeling in the county, that many of the farmers expressed great opposition towards Mr. Gibson, the other candidate at the election, in consequence of the opinions he entertained on the subject of the repeal of the Corn Laws; that various publications in newspapers, and otherwise had been circulated, in order to bring George Smith, a principal witness for the prosecution, into discredit and disgrace; that in consequence of these articles, and of the prejudice thereby produced, it would be impossible to obtain a fair trial in Cambridgeshire, or even in an adjoining county; and that the number of persons qualified to serve as jurors was very small. Applications of this kind were generally unsuccessful, but where, as in the present instance, the widely spread libels entered into the whole life of the witness Smith, and were in their effects subversive of justice, the court would be governed altogether by circumstances.

Patteson, J.—I am very unwilling to accede to applications of this nature, unless the strongest possible ground is laid for entertaining them; first, because such applications are very frequently made; and secondly, because much more than the truth warrants is too often imputed on both sides. The application recently made in this court, in the case of the borough of Ludlow, had relation to an action commenced for bribery, committed at the recent election for that borough. It was contended in that case at the bar, that because one of the candidates for the borough of Ludlow happened to be a member of a very distinguished and influential family in the county of Salop, there could not be a fair and impartial trial in the body of that large county. To suppose that because an action for bribery grew out of the election for the borough of Ludlow, therefore there could not be a fair trial within so large a county, was not only a grossly improbable imputation, but a libel on the county. In the present case, however, the circumstances are different. The grounds laid, are not only stronger in themselves, but additional matter has been presented to the court. Wherever it can be satisfactorily shewn to the court, that there exists such a degree of prejudice as shall interfere with a fair trial; when direct attacks have been made on the party or witnesses, in such cases, the court has granted the application to change the venue. And in this case, under the particular circumstances, it seems to me that sufficient grounds have been laid to accede to this application, and I am therefore of opinion that the rule must be granted.

Rule granted.—*Regina v. Samuel Long*, H. T. 1840. Q. B. P. C.

#### JUDGMENT AS IN CASE OF A NONSUIT. — PEREMPTORY UNDERTAKING.

Where a peremptory undertaking has been given to proceed to trial at a particular sittings in a term, and the plaintiff does not give notice for these sittings, judgment absolute as in case of a nonsuit may be moved for in the same term, after those sittings have passed.

Archbold in this case moved for judgment as in case of a nonsuit. It appeared that a rule had been obtained, which was discharged on a peremptory undertaking to try at the first sittings in the present term. No notice of trial had been given during the sittings, nor has the cause been set down. Now the sittings had passed, and all the causes had been heard.

Archbold now contended that the only question was, whether the motion could be made now, or not until Easter Term. He submitted that on principle, no objection could be made to the motion. Here there had been confessedly a default in not proceeding to trial pursuant to the terms of the undertaking, &c. The time for curing that default had now gone by.

Patteson, J.—The plaintiff has not given notice of trial, and the time is passed when he ought to have tried. I see therefore no objection to the application; it is plain there has been a default, and therefore you may take your rule.

Rule absolute.—*Ashton v. Johnson and others*, H. T. 1840. Q. B. P. C.

#### INFORMATION.—PAWNBROKER.—MANDAMUS. —ACT OF PARLIAMENT.

An information founded on an act of parliament must describe it as an act passed "in a session" holden in a particular year, and not merely in the year itself.

In this case an application was made to the Court in person, for a mandamus, directed to two justices of the names of White and Fairbrother, Aldermen of the City of London, commanding them to hear the information of the applicant against George Gray, a pawnbroker. From the affidavit in support of the motion, it appeared that the information was laid before the said justices under the 39 & 40 Geo. 3, c 99; a preliminary objection was taken by Mr. Humphreys, an attorney, who appeared for Gray, to the effect that the information was laid under an act set forth to have been passed in the 39th & 40th years of the reign of Geo. 3, whereas it ought to have been set out as an act passed in a session holden in the 39th & 40th year of his Majesty.

Littledale, J.—I cannot grant this application. There is no doubt that this form of allegation was bad, and that the justices were right in dismissing the information on this ground.

Motion refused.—*Ex parte Williams*, H. T. 1829. Q. B. P. C.

**Common Pleas.**

**PLEADINGS.—SPECIAL DEMURRER.—CASE.—  
ASSUMPSIT.**

*A count in a declaration alleged that the plaintiff had placed certain paper in the hands of the defendant for the purpose of printing a certain work for the plaintiff, but that the defendant wrongfully pawned the paper: Held, that the count was properly framed in case.*

In this case the first count of the declaration stated, that the plaintiff was desirous of publishing a work to be called "The Catholic Directory and Annual Register," whereof the defendant had notice; and in consideration of the premises, the plaintiff retained the defendant, for a certain reward, to print the said work, and delivered to the defendant divers, to wit, sixty reams of paper, to be by the defendant used in and about the printing of the said work, and on which the said work was to be printed; and the defendant accepted such employment, and retained and received the paper for the purpose aforesaid; yet the defendant wrongfully intending to prejudice the plaintiff, disregarded his duty and retainer in this, to wit, that he did not use the paper and print the work thereon, but wholly refused so to do; and afterwards, to wit, &c. without the licence of the plaintiff, used part of the paper for his own private purpose, and wrongfully pawned the remainder to raise money for himself, whereby the plaintiff was deprived of all use and benefit of the paper. Special demurrer and joinder.

*Charnell, in support of the demurrer.* The objection to this count is, that it states in substance, a contract made by the defendant, and then sets out a breach for not performing his promise. Such a breach of contract, it is submitted, cannot be made the subject of an action of *tort*, it should have been brought in *assumpsit*. It is true that in *Samuel v. Judin*,<sup>a</sup> the Court was inclined to think, that although there was an inducement of a contract, yet if the breach were in the nature of a *tort*, the plaintiff might declare in case. There however, there was a general demurrer to the whole declaration, which contained other counts; here, the objection is taken by special demurrer to the form of this particular count. It is important that the distinction between actions *ex contractu* and *ex delicto* should be observed. In *Blart v. Goudron*,<sup>b</sup> and *Brown v. Dizan*,<sup>c</sup> the question turned on the misjoinder.

*Blartis, contra.*—Though the goods were delivered under a contract, case clearly lies for an unlawful pawning. This is not simply a nonseazance; the declaration shews a misseazance, and goes on to allege that the plaintiff was deprived of all use and benefit of the paper. [He was here stopped by the Court.]

*Rosanquet, J.*—This is a special demurrer, on the ground that according to the precise form in which the breach is laid in the declaration, no matter is suggested which can be made the subject of an action on the case. The question then is, whether this is simply a

breach of contract? Now the goods are deposited with the defendant for a specific purpose; certainly, that is under a contract, and the possession of the defendant is a lawful possession. The defendant pledges them. That seems to me to amount to a *tort*. The substantial breach is a misappropriation in a wrongful manner.

*Erskine, J.*—Though some of the allegations in the declaration may be considered as matters of omission, yet the substantive allegation is of an act done by the defendant amounting to a *tort*. He pawns, and thereby tortiously deals with articles entrusted to him. This, though connected with a breach of contract, appears to me to be something beyond it.

*Maule, B.*—The question is, whether this is exclusively a breach of contract? It appears to me that this is an act done by the defendant, for which an action would lie, though no contract was stated as an inducement. It might be said that a declaration merely stating an unlawful pawning would be a round-about count in trover, but that objection would be answered by the statement in the declaration, shewing that the plaintiff is not entitled to the possession of the article pawned. It is enough, however, to say that there is some matter in the declaration which is by law the subject of an action on the case, which being so, the demurrer cannot be supported.

Judgment for the plaintiff.—*Smith v. White*, H. T. 1840. C. P.

**UNDEFENDED CAUSE.—NEW TRIAL.—COSTS,**

*A cause was tried as an undefended cause, no notice of the plaintiff's intention to do so having been given to the defendant; but the cause being in the written list of the day, the Court allowed the cause to be placed at the head of the list at the next sittings, the costs of the day to abide the event.*

*Bramwell* shewed cause against a rule nisi obtained by *Bumpas, Serjt.* in this case, for a new trial. It appeared that the cause was tried as an undefended one, at the sittings after Michaelmas Term. The plaintiff declared on a bill of exchange against the defendant as acceptor, to which the latter pleaded that he did not accept. The affidavits stated, that the cause being in the written list for the day, the plaintiff's counsel told the judge it was undefended, and consequently, it was taken before its turn. It was also sworn on behalf of the defendant, that he had a good defence on the merits, and that on the day before the cause was tried, a brief had been delivered to counsel on his behalf.

*Bramwell* now submitted that the defendant was not entitled to notice, as that is only necessary where the cause does not appear in the list of the day. *Bland v. Warren*.<sup>a</sup> The cases of *Fourdrinier v. Bradbury*,<sup>b</sup> *Blockhurst v. Bulmer*,<sup>c</sup> and *Aust v. Fenwick*,<sup>d</sup> shew, that the defendant must be prepared to try at any time in the course of the day,—at all events,

<sup>a</sup> 7 Ad. & El. 11.

<sup>b</sup> 3 B. & A. 328.

<sup>c</sup> 5 B. & A. 907.

<sup>d</sup> 2 D. P. C. 246.

new trial can only be granted on payment of costs.

*Bompas, Serjt. contrd.*—The objection is, that the judge tried the cause under the impression that it was undefended, when in fact, instructions had been delivered to counsel.

*Mauls, J.*—Suppose it had been tried upon a representation to the judge that it was a short cause: could you then have got rid of the verdict?

*Bompas, Serjt.*—Such a statement would not be made *ex parte*.

*Per Curiam.*—The rule undoubtedly is as stated by the plaintiff's counsel. We think, however, that this cause may take its place at the head of the paper at the next sittings, the costs to abide the event.

Rule accordingly.—*Dorrien and others v. Howell, H. T.* 1840. C. P.

## COMMON LAW SITTINGS.

*In and after Easter Term, 1840.*

### Queen's Bench.

IN TERM.

MIDDLESEX.

LONDON.

Wednesday April 22				
Saturday .. .. 25		Tuesday	May 12	
Monday .. May 11				

AFTER TERM.

Thursday .. May 14		Friday .. May 15		
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The Court will sit at eleven o'clock in term, in Middlesex; at twelve in London; and in both at half-past nine after term.

Long causes will probably be postponed from the 22d and 25th of April to the 14th of May; and all other causes on the lists for the 22d and 25th of April, will be taken from day to day until they are tried.

Undefended causes only will be taken on the 11th of May.

Short defended as well as undefended causes entered for the sitting on May 12th, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

### Common Pleas.

IN TERM.

MIDDLESEX.

LONDON.

Wednesday April 29		Friday .. .. May 1		
Wednesday May 6		Friday .. .. May 8		

AFTER TERM.

Thursday .. May 14		Friday .. May 15		
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The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on

those days, will be tried by adjournment on the days following each of such sitting days.

On Friday, May 15th, in London, no causes will be tried, but the Court will adjourn to a future day.

### Exchequer of Pleas.

MIDDLESEX.

1st Sitting	Wednesday Apr. 22
By Adjournment	{ Thursday .. 23
	{ Friday .. 24
2d Sitting	{ Saturday .. 25
By Adjournment	{ Monday May 4
	{ Wednesday .. 6
	{ Thursday .. 7
	{ Friday .. 8

LONDON.

1st Sitting	Wednesday Apr. 29
By Adjournment	Thursday .. 30
2d Sitting.	Monday May 11
By Adjournment	Tuesday .. 12

AFTER TERM.

MIDDLESEX.

Thursday .. .. .. .. ..	.. May 14
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LONDON.

To adjourn only	Friday May 15
The Court will sit during term at ten o'clock.	

## EASTER TERM EXAMINATION.

The Examiners have fixed Wednesday the 6th May for the examination, at the usual hour, ten o'clock in the forenoon, at the Hall of the Incorporated Law Society. One of the Masters of the Queen's Bench will preside.

The testimonials of due qualification must be left by the candidates with the Secretary of the Law Society, on or before Wednesday, the 22d instant. The earlier they are left the better, in order that any defects may be pointed out and remedied.

## THE EDITOR'S LETTER BOX.

The List of Law Bills in Parliament remains in the same state as last week, except that the Admiralty Court Bill has been read a first time, and the Bolton Small Debts Court Bill has passed the Lords.

The question arising on a very singular caption shall be inserted.

We think X. should address himself to the Committee of the Law Society. It is not within our province to discuss all the arrangements of that society, or the due observance of its regulations. The matter in question is not of a public nature.

We are aware that H. H. is interested for the exemption of medical men on Coroner's Juries. Our present concern is for the lawyers.

We will find room for the letters on the Middlesex Registry of Deeds; the Privilege of Attorneys; the Tests of Subpoenas; and the Construction of the Statute against Gaming.

# The Legal Observer.

SATURDAY, APRIL 11, 1840.

— — "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## APPLICATIONS TO MASTERS IN CHANCERY.

The feeling that Masters in Chancery should sit in public seems to gain ground; but whatever doubt may be entertained as to this, there can be none that the office might be more efficiently discharged than at present. As it now exists, the evil is that it greatly depends on the personal habits of the individual who holds it, whether the Master really fulfils the purposes for which he is appointed. If he be willing to work, we grant that there is no cause to complain; but if he be unwilling, how is it then? We are afraid that the Master, if so disposed, may do very little indeed. We mean nothing personal or invidious, but we complain that an important judicial office should be constituted so indulgently to the weakness of human nature.

We are the more induced to make this remark, as we are disposed rather to increase the duties of the Master than to decrease them. We are quite satisfied that many matters might be referred to them in the first instance with great advantage to the suitor; and that this opinion is entertained by the legislature, appears from several recent circumstances. There are now two bills before the House of Commons, in which the Master is intended to be rendered available in this way.

The first of these is "A Bill to enable the owners of settled estates to defray the expense of draining the same," which proposes, as amended by the Select Committee, that any tenant for life may apply by petition to the Court of Chancery or Exchequer for leave to make permanent improvements in the lands by draining the same, and every such petition shall be referred to a

Master of the Court of Chancery or Exchequer, who is to report on such proposal.

The second bill<sup>a</sup> is "A Bill for improving the condition of Grammar Schools," by which a summary process is intended to be provided, whereby parties connected with schools may frame new statutes and submit them for the approval of the Court of Chancery; and the mode of submitting them is to be as follows: the Lord Chancellor is to select and appoint one of the Masters of the Court, to consider all new statutes, and all schemes connected therewith, and also "a secretary for grammar schools," who shall communicate with such Master. The governors are to transmit the proposed statutes, with a report of the circumstances, to the secretary, and the secretary is to prepare a statement from the reports of the commissioners and other documents, to lay before the Master, and to carry on the correspondence; and the Master is to proceed to the consideration thereof, and to make his report on every case to the Court of Chancery, in the same manner as if the same had been referred to him by an order or decree of the Court made in any cause or matter therein pending, and in such report he shall approve of the proposed statutes or scheme with or without variation, unless he shall be of opinion that in consequence of the intricacy of the circumstances, it cannot be satisfactorily determined in a summary way, in which case he shall so report; and unless the Master shall otherwise direct, no parties shall appear before him by counsel or solicitor, or otherwise, than by the said secretary for grammar schools. We do not express any opinion as to the merits of either of these bills, although we think we may safely say the latter cannot

<sup>a</sup> See *ante*, p. 360.

pass in its present shape. We merely notice them to show that a feeling exists to render the Master's Court a Court "of the first instance," in which, we believe, it might in many common cases be made serviceable. An illustration of this was given very recently in the House of Commons on a debate on the expense of appointing trustees to charity estates. These, it was suggested, might be well appointed by the Master on a simple reference to him, he calling for the opinion of the Court where it was necessary. But we do not think it is necessary to have any "secretary for grammar schools," or other such functionary as this. We much prefer, and we think the public would prefer, the service of the responsible legal agents of the parties, *viz.* solicitors and counsel. However much they may be undervalued by some, we would much rather trust to their watchfulness, learning, and honesty, than to the chance of service from any paid or unpaid functionary. But we think with their assistance, the Master being employed at first, instead of at last, might save much unnecessary expense and delay.

We have just received the returns ordered by the House of Commons as to the matter; and shall advert to them in our next number.

## PRACTICAL POINTS OF GENERAL INTEREST.

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### INCITING TO SUICIDE.

In our sixteenth volume, p. 491, we collected the cases relating to "consenting to suicide," and according to them Mr. Justice Patteson laid down the law to be that supposing parties mutually agreed to commit suicide, and one only accomplished that object, the survivor would be guilty of murder in point of law. *Regina v. Alison*, 8 C. & P. 418; 16 L. O. 492. In the case of *Rex v. Russell*, M. C. C. 356, it was held by the fifteen Judges, that an accessory before the fact to the crime of self-murder was not triable at common law, because the principle could not be tried, and that he is not now triable for a substantial felony under the statute of 7 Geo. 4, c. 64, s. 9, as that statute was to be considered as extending to those persons only who, before the statute, were liable either with or after the principal, and not to make those liable who before could never have been tried. And it was also held, that if a woman takes poison with intent to procure a miscarriage, and dies of it, she is guilty of self-murder, whether she was quick with child or not, and that the

person who furnished her with the poison for that purpose will, if absent when she took it, be an accessory before the fact. But a person cannot be tried for inciting another to commit suicide, although that other commit the suicide. This was held in the following case:—The indictment charged that Ann Burton murdered herself by poisoning herself with arsenic, and that the prisoner did feloniously incite and procure the said Ann Burton the said felony and murder to do and commit. *Alderson*, B., (to the jury.)—You have no authority to inquire into this charge; this is a case of suicide, and the prisoner is charged with inciting it; that is a case that by law we cannot try. The prisoner must be acquitted. Verdict—Not guilty. *Reg. v. Leddington*, 9 C. & P. 79.

## LIABILITY OF ATTORNEYS TO SERVE AS JURYMEN ON CORoner'S INQUESTS.

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The act 6 Geo. 4, c. 50, for consolidating and amending the laws relative to jurors and juries, fixes the age and qualification of persons, "liable to serve on juries for the trial of all issues joined in any of the King's Courts of Record at Westminster, and in the superior Courts, both civil and criminal, &c. and in all Courts of Assize, Nisi Prius, Oyer and Terminer, and Gaol Delivery."

The 2d section exempts, amongst others, "all attorneys, solicitors, and proctors, duly admitted in any Court of Law or Equity, or of Ecclesiastical or Admiralty jurisdiction, in which attorneys, solicitors, and proctors have usually been admitted, actually practising, and having duly taken out their annual certificates."

Then the 52d section enacts, that no person shall be liable to be impanelled as a juror, &c. upon any inquest, &c. by virtue of any *writ of inquiry*, &c. who shall not be qualified to serve on trials at Nisi Prius: "Provided always, that nothing herein contained shall extend to any *inquest to be taken by or before any coroner of a county by virtue of his office*, or to any inquest or inquiry to be taken or made by or before any sheriff or coroner for any liberty, franchise, city, borough, or town corporate, not being counties, or of any city, borough or town, being respectively counties of themselves; but that the coroners in all counties when *acting otherwise than under a writ of inquiry*, and the sheriffs and coroners in all such

places as are herein mentioned, shall and may respectively take and make all inquests and inquiries by *jurors of the same description as they have been used and accustomed to do before the passing of this act.*"

It thus appears that the exemption of attorneys in the 2d section does not extend to coroners' inquests, except under writs of inquiry; and Mr. Wakley, one of the coroners for Middlesex, deems them liable to serve, and contends, we understand, that if they were privileged before the act, that privilege is taken away by the act. This, however, is manifestly a mistake, for the 52d section only leaves to coroners the power to make inquests by "jurors of the *same description as they have been used and accustomed to do.*"

Let us see, then, how the law stood, in this respect, prior to the 6 Geo. 4, c. 50.

Now an attorney, from the necessity of his attendance in Court, has always been held *exempt from all offices or duties which require personal service*, and this is deemed a privilege of the Court to which he belongs, and established for the benefit of the suitor. See *Mayor of Norwich v. Berry*, 4 Burr. 2109, where it is laid down by Mr. Justice Yates, that an attorney shall be exempt from all offices incompatible with his attendance in his Court. An attorney (says the learned Judge) has this privilege because he is bound to attend the Court of which he is a minister. He is entitled to this privilege as much as he is to that of not being called out of his Court by a *suit* brought against him in another Court. And as he is obliged to this attendance on the Court of Common Pleas, therefore he is not within the bye-law which makes his attendance requisite in another place: for he cannot be necessarily attendant in both places at the same time, (p. 2115.) Mr. Justice Aston said, "Whilst he continues to practise, the privilege of *not being drawn from attending the Court* is as old as the Court on which he is attendant. The privilege is instituted for the sake of the suitor."

The following, amongst other instances, are cited in the same report of the *Mayor of Norwich v. Berry*, (p. 2111):—*Prouse's case* in Cro. Car. 389, where an attorney was elected constable or tithing man, but discharged from executing the office. In *Venable's case*, Cro. Car. 11, an attorney had been pressed for a soldier, and the writ of privilege was granted. In the case of *Evingdon*, 2 Str. 1143, an attorney was summoned on the London militia, and exempted. So in *Heaton's case*, 2 Barnes'

Notes, 33 (p. 42 in 4to edition), he had his writ of privilege to excuse him from serving in the trained bands of the city of London. In *Stone's case*, 1 Ventr. 16, 29, a copyholder of a manor, chosen collector of the lord's rent, the privilege was allowed. So in the case of a bailiff of a borough, or a mayor of a borough. (*Officina Brevium*, 166, 174. *Evington's case* above mentioned, cites and recognizes these two precedents, on which Lord Mansfield in his judgment laid great stress.) Again in *Richmond's case*, 1 Barnes' Notes 29, (37 in 4to ed.) the Court refused to set aside a writ of privilege obtained by the attorney against serving the office of bailiff. Neither is he liable to serve the office of overseer; *Gerrard's case*, 2 W. Black. Rep. 1126; and see 8 Term Rep. 379 n.

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The exemption of the medical profession from serving on juries or inquests is thus provided: the 14 Henry 8 exempts *Physicians*; the 6 & 7 W. 3, c. 4 exempts *Apothecaries*, and the 18 G. 2, c. 15, s. 10, exempts *Surgeons*.

## NEW BILLS IN PARLIAMENT.

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### ADMIRALTY COURT.

THIS is a bill to improve the practice and extend the jurisdiction of the High Court of Admiralty of England. It recites that the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved; it is therefore proposed to be enacted, that it shall be lawful for the Dean of the Arches for the time being, to be assistant to, and to exercise all the power, authority and jurisdiction, and to have all the privileges and protections of the Judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said Court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the Dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the time sitting or transacting the business of the same Court, and also during any vacancy of the office of Judge of the said Court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such suits and proceedings shall be entered and registered as having been brought and as having taken place before the Dean of the Arches sitting for the Judge of the High Court of Admiralty.

2. *Practitioners*.—That all persons who now are, or at any time hereafter may be entitled to practise as advocates in the Court of Arches,

are and shall be entitled to practise as advocates in the said High Court of Admiralty; and that all persons who now are or hereafter may be entitled to act as surrogates or proctors in the Court of Arches, shall be entitled respectively to practise and act, or be admitted to practise and act, as the case may be, as surrogates and proctors in the said High Court of Admiralty, according to the rules and practice now prevailing and observed, or hereafter to be made in and by the said High Court of Admiralty, touching the admission and practising of advocates, surrogates and proctors in the said Court respectively.

**3. Jurisdiction.**—That after the passing of this act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims, or causes of action respectively.

**4.** That the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages or bottomry, which shall be instituted in the said Court after the passing of this act.

**5.** That whenever any award shall have been made by any justices of the peace, or by any person nominated by them, or within the jurisdiction of the Cinque Ports, by any commissioners, respecting the amount of salvage to be paid, or respecting any claims and demands for services or compensation, which such justices and commissioners within their several jurisdictions are empowered to decide under the provisions of two acts passed in the second year of the reign of King George the Fourth, for remedying certain defects relative to the adjustment of salvage, or whenever any sum shall have been voluntarily paid on any such account of salvage, services or compensation, it shall be lawful for any person interested in the distribution of the amount awarded or paid to require distribution to be forthwith made thereof, and the person or persons by whom such amount shall be awarded, or in the case of voluntary payment, the person by whom the same shall have been received, shall forthwith proceed to the distribution thereof among the several persons entitled thereunto, to be certified in the case of an award under the hand of the person or persons by whom such amount shall be awarded; and an account of every such distribution shall be annexed to the award; and if any person interested in the distribution shall think himself aggrieved on account of its not being made according to the award, or otherwise, it shall be lawful for him, within fourteen days after the making of the award, or payment of the money, but not afterwards,

to take out a monition from the said High Court of Admiralty, requiring any person being in possession of any part of the amount awarded or voluntarily paid, to bring in the same to abide the judgment of the Court concerning the distribution thereof; and in the case of an award the person or persons by whom the award shall have been made, shall upon monition send without delay to the said High Court of Admiralty a copy of the proceedings before him and them, and of the award, on unstamped paper, certified under his or their hand; and the same shall be admitted by the Court as evidence, and the amount awarded or voluntarily paid shall be distributed according to the judgment of the Court.

**6.** That every contract for the division of salvage money, whether made prior to or after the performance of any salvage service, and every assignment or bargain for the sale of any share of salvage, and every power of attorney expressed to be irrevocable for the receipt of salvage money, and every contract tending to deprive any party of his just share of salvage money or his right thereto, shall be null and void to all intents and purposes.

**7.** That the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever, in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for any necessaries supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessities furnished, in respect of which such claim is made.

**8.** Foreign ships of less value than damages and expenses may receive a British register.

**9. Evidence.**—That in any suit depending in the said High Court of Admiralty, the Court (if it shall think fit) may summon before it, and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition, or before a commissioner, as hereinafter mentioned; and notes of such evidence shall be taken down in writing by the Judge or registrar, or by such other person or persons, and in such manner, as the Judge of the said Court shall direct.

**10.** That the said Court may if it shall think fit, in any such suit, issue one or more special commissions to some person, being an advocate of the said High Court of Admiralty, of not less than seven years' standing, or a barrister at law of not less than seven years' standing, to take evidence by word of mouth, upon oath, which every such commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts and in such manner, order and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court in such form and manner as in and by the commission shall be directed; and that such commissioner shall be attended, and the witnesses shall be examined, cross-examined and re-ex-

minated by the parties, their counsel, proctors, or agents, if such parties or either of them shall think fit so to do; and such commission shall, if need be, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon, or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such proceedings, and make such order or orders upon such report as justice may require, and as may be instituted or made in any case of contempt of the said Court.

11. That it shall be lawful in any suit depending in the said Court of Admiralty, for the Judge of the said Court, or for any such commissioner appointed in pursuance of this act, to require the attendance of any witnesses, and the production of any deeds, evidences, books or writings, by writ to be issued by such judge or commissioner in such and the same form, or as nearly as may be, as that in which a writ of *subpoena ad testificandum*, or of *subpoena duces tecum*, is now issued by her Majesty's Court of Queen's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said judge or commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said Court.

12. The provisions of 3 & 4 W. 4, c. 42, with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said act to be made on the record of judgment shall be made upon the document containing the final sentence of the said Court, and shall have the like effect as the entry on such record.

13. *Trial of Issues.*—In any contested suit depending in the said Court of Admiralty, the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues shall be specified by the judge of the said Court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the judge of the said Court to settle the same; and such trial shall be had before some judge of her Majesty's Superior Courts of Common Law at Westminster, at the sittings at Nisi Prius in London or Middlesex, or before some judge of assize at Nisi Prius, as to the said Court shall seem fit.

14. *Costs.*—That the costs of such issues, or of such commission as aforesaid, as the judge of the said High Court of Admiralty shall under this act direct, shall be paid by such party or parties, person or persons, and be taxed by the registrar of the said High Court of Admiralty, in such manner as the said judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

15. *New Trials.*—That the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner hereinbefore directed with regard to the first trial of such issue, and may by order of the same Court direct such costs to be paid as to the said Court shall seem fit, upon any application for a new trial, or upon any new trial, or second or other new trial, and may direct by whom and to whom and at what times and in what manner such costs shall be paid.

16. That the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in council.

17. Bills of exceptions to be allowed on trials of issues.

18. Record of the issue to be transmitted to the Court of Admiralty.

19. Provisions of 2 & 3 W. 4, c. 92, as to appeals to apply to suits in Court of Admiralty under this act. 3 & 4 W. 4, c. 41, Privy Council Act, to apply in same manner.

20. *Rules and Orders.*—That it shall be lawful for the Judge of the said High Court of Admiralty from time to time to make such rules, orders and regulations respecting the practice and mode of proceeding of the said Court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders or regulations: Provided always, that no such rules, orders or regulations shall be of any force or effect until the same shall have been approved by her Majesty in council.

21. Protection of the Judge of the Court of Admiralty from actions.

22. Gaolers to receive prisoners committed by the Court of Admiralty or by Admiralty Coroners.

23. Prisoners in contempt may be discharged.

24. Jurisdiction to try questions concerning booty of war.

25. Jurisdiction of Courts of Law and Equity not taken away.

#### ADMIRALTY COURT JUDGE AND OFFICERS.—

In addition to the preceding bill, another has been brought in, to make provision for the Judge, Registrar, and Marshal of the High Court of Admiralty in England. It recites that the present manner of remunerating the Judge, Registrar, and Marshal ought not to be continued, and that it is expedient to make other provisions for the same, and for defraying the other necessary expences incidental to the Court. It is therefore proposed to be enacted—

1. Judge to be paid by a salary of 4,000*l.* a year.

2. Repeal of 50 Geo. 3, c. 118. Registrar to be paid by a salary of 1,400*l.*

3. Marshal to be paid by a salary of 500*l.*

4. Clerks, &c. to be appointed by Judge, subject to approval of Lord High Admiral.
5. Retiring pension to Judge of 2,000*l.*
6. Salaries and annuities, how to be paid.
7. Office of registrar not executed by deputy.
8. Appointment of deputy registrar in case of illness, &c.
9. Judge of Admiralty may direct the appointment of an assistant registrar; his salary.
10. Her Majesty may alter table of fees.
11. Registrar to account annually for fees received by him.
12. Fees to be carried to fee fund.
13. Surplus to be paid to the Consolidated Fund.
14. Judge and registrar to receive no fees on their own account.
15. Accounts may be referred to Judge of Court of Admiralty or Dean of Arches.
16. Act may be amended.

## PROFESSIONAL GRIEVANCES.

### THE MIDDLESEX REGISTRY OF DEEDS.

*To the Editor of the Legal Observer.*

Sir,

You have rendered a very great service to the profession by calling attention to the state of the Middlesex Register Office; but there is one point which you have not noticed, and that is the want of due accommodation. It must be evident to any one, that a person making a minute and laborious search, cannot do it with comfort to himself, or satisfaction to his client, unless the office be sufficiently large and sufficiently lighted. Now, I ask any one who has had the misfortune to make a search at the Middlesex office, whether there is the one or the other?

Again, the indexes are kept in a very imperfect manner, and the memorials are written in books so large and heavy that it almost requires a drayman to move them. You will I hope, follow up this subject, and complete the good work you have begun.

ONE WHO HAS SEARCHED THE MIDDLESEX REGISTRY.

## THE PRIVILEGE QUESTION.

A PETITION, signed by twenty-one attorneys and solicitors practising in the metropolis, was presented to the House of Commons by the Attorney General, in the latter part of March last, stating—

That in the opinion of your petitioners, it is the duty of your Honourable House to inquire into, and in concurrence with the other branches of the legislature, to apply where practicable, a remedy for any abuse to which its attention is called.

That in making such inquiries, it must oc-

casionally happen that facts discreditable to individuals be ascertained, which it would be highly improper for unauthorised individuals to publish, but which may be highly necessary to be communicated to your Honourable House as the foundation for legislative interference.

That the people cannot judge of the propriety of your acts, if ignorant of the facts on which your proceedings are grounded, and they are entitled to have those facts published to them, that knowing them they may be the better enabled to instruct their representatives on the proceedings founded upon such facts.

That the most convenient way of making known those facts is by publication, in the mode now pursued by your Honourable House.

That the words "published by order of the House of Commons," is a sufficient notice that such publication is privileged.

That your Honourable House cannot fully exercise the privilege of printing and publishing, unless they can protect their officers acting in obedience to their orders in making such publication.

That to take any step in contravention of such orders, is a contempt of your Honourable House.

That your Honourable House representing the people is responsible for the people for the due exercise of its functions, and such responsibility is a sufficient guarantee against the abuse of its powers, or the refusal of redress in cases where injury may chance to be unjustly sustained.

That the power of your Honourable House to commit for contempt, is established by the recent decision of the Court of Queen's Bench, on the application of the sheriffs of Middlesex for a *habeas corpus*.

That in the recent conduct of Mr. Howard, an attorney, committed to Newgate by your Honourable House for contempt, there were circumstances which your petitioners cannot approve, but they desire to express their opinions on this question, with reference to its general bearing and merits, abstracted from the conduct of any particular individuals.

That it is no defence or excuse for an attorney to allege that he acted by the orders of his client, for that he is bound to obey such orders only when they are lawful.

That such an excuse would never be admitted by any Court in Westminster Hall.

That entertaining as we do the most unbounded respect for the laws of our country, and the tribunals by which they are administered, and satisfied that the decisions of such tribunals are looked to with implicit confidence by the great body of the people, your petitioners deeply lament that a difference should have arisen between your Honourable House and the Court of Queen's Bench as to the respective powers of each, and we rejoice that a bill has been introduced into your Honourable House with a view to terminate such differences.

That it appears to your petitioners, that some legislative measure is also required to

enable your Honourable House more effectually to exercise your privileges, and to protect them during the recess of Parliament.

That your petitioners, differing, as they fear they do, on the subject-matter of this petition, from a great majority of their professional brethren, are, nevertheless, desirous in a case so materially affecting their profession, and the conduct which they themselves may be called on to pursue, to submit these their sentiments to your Honourable House.

Your petitioners humbly pray, that the bill lately introduced into your Honourable House to regulate the publication of parliamentary papers, may pass into a law.

And your petitioners will ever pray, &c.

WILLIAM VIZARD,  
THOMAS WING,  
THOMAS WARRE,  
&c. &c.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRACTICE.—FOREIGN COURTS.—JURISDICTION.—INJUNCTION.

*This Court, after making a decree for an account in a suit pending here, will exercise its jurisdiction to restrain plaintiffs from bringing actions against the defendants for the same matter in Scotland. But if some of the defendants and their property be within the foreign jurisdiction, and the plaintiffs' object by the actions there be to fix that property with a lien, to answer the result of the accounts in the suit here, this Court will, on special application, grant leave to proceed with the actions, so far as to get the security of the property, according to the practice of the foreign Court.*

The bill in this cause was filed in 1831, by Sir James Webster Wedderburn, and the other children, or persons representing the children of J. David Webster, deceased, for an account of old partnership transactions, against his surviving partners and others who succeeded him in the partnership, and also against his surviving partners and others as his executors, or their representatives. The facts of the case are stated in the judgment of the Master of the Rolls, decreeing an account, reported 2 Keen, 722, and also in the judgment of the Lord Chancellor, affirming that decree on appeal, reported 4 Myl. & C. 41. While the Master was proceeding in taking the accounts under that decree, the plaintiffs brought actions in the Court of Session in Scotland, against several of the defendants who resided there generally, and whose property, chiefly heritable, was situated there, for the purpose of obtaining, by the Scotch process of inhibition and arrestment, a lien on that property to secure payment of the sums which they expected would be found due to them on the accounts. A motion was made on behalf of

the defendants before the Master of the Rolls in the latter end of last Hilary term, for an injunction to restrain the plaintiffs from proceeding with the actions in Scotland, on the ground that those actions, as appeared by the summonses served on the defendants, were brought for the same relief that was sought by the suit in this Court. That motion was opposed on the ground that the plaintiffs would not be able to obtain payment of what would be found due to them in the suit here (which, as their counsel stated, they calculated at 100,000l.), unless they could attach the property of the defendants in Scotland, so that it could not be disposed of in the meantime; and that was all they sought by the actions there. Another ground of resistance to the motion was, that it was contrary to practice to grant an injunction on motion in a suit which did not seek an injunction, and the defendants should for that purpose file an injunction bill.

The *Master of the Rolls* gave his judgment to this effect.—His Lordship was of opinion that he ought to grant the application: upon the authority of the cases referred to in the argument,<sup>a</sup> he thought the Court had jurisdiction to do so. The question was, whether it was a proper case for the exercise of that jurisdiction. He would not express any opinion as to whether in no case pending proceedings under a decree in a cause in this Court, a party could be permitted to avail himself of the assistance of a foreign Court for the purpose of attaching property of his adversary there. There might, in his opinion, be cases in which a party might apply for and obtain leave of the Court to take such proceedings. But the general principle on which this Court acted was, that a party should not take proceedings here and in a foreign Court, simultaneously for the same matter; in other words, that a defendant should not be vexed with a double suit for the same object. His Lordship granted the injunction, with liberty to the plaintiffs to apply for special leave to prosecute the actions in Scotland.

The plaintiffs now moved the *Lord Chancellor* to dissolve the injunction, or to grant leave to prosecute their actions in the Scotch Court, so far as the obtaining a decree of arrestment of the defendant's property in Scotland.

Mr. Jacob, Mr. Stuart, and Mr. Koe, were in support of the motion.

Mr. Wigram and Mr. Colville opposed it.—The arguments and cases cited were much the same as those used before the Master of the Rolls.

The *Lord Chancellor* said, no one of the cases cited was precisely in point, but he would dispose of the case by analogy to such cases as

<sup>a</sup> *Mocher v. Reed*, 1 Ball. & Beaty, 318; *Wilson v. Wetherhead*, 2 Meriv. 406; *Booth v. Leycester*, 1 Keen, 519; *Lord Portalington v. Soulby*, 3 Myl. & K. 107; S. C. 7 Leg. Obs. 234; see also the latest case on this subject, 18 Leg. Obs. 411.

were applicable to it. He agreed with the *Master of the Rolls* that suits for the same thing should not be allowed to proceed in two Courts; and whether such proceedings were had in this and any other Court in this country, or in this Court and in a foreign Court, the principle was the same; and it was that no party should be doubly vexed on the same account. If circumstances should at any time exist, forming an exception to the rule, the proper course would be to apply for the permission of this Court. In the present case there was a decree for an account in the course of prosecution before the Master, to ascertain certain balances between the parties, and some of the defendants were residing out of the jurisdiction, and they had landed property within the foreign jurisdiction, within which they themselves resided, and by certain proceedings in the foreign Court measures might be taken to render that property an available security for satisfying any demand the plaintiffs might establish against the defendants. It might be, that when the accounts in the suit here should be taken, and the balance, if any, found in favour of the plaintiffs, there might be no defendant, or no property of the defendants within the jurisdiction to answer the debt, in which event the plaintiffs would have to institute a suit in Scotland to compel payment there. Under such circumstances, while this Court was administering equity to a party by protecting him from being doubly vexed with suits in different Courts for the same thing, it was proper to consider whether a plaintiff should be prevented from pursuing his demand in a foreign Court. To prevent a plaintiff under all circumstances from doing so, might be doing him great injustice, under colour of doing justice to a defendant. It was said that the action brought by these plaintiffs in the foreign Court was not in its nature a suit for establishing their demand. If it was merely to provide security for a possible demand, without going farther, it was hard to say what was the defendants' ground of complaint of being doubly vexed. The plaintiffs would not proceed beyond a certain stage in the suit unless the defendants pressed them on; and if they so pressed the plaintiffs, they could not then complain of their own act. Under all the circumstances, his Lordship would allow the actions in Scotland to proceed to the extent of establishing a security there for the result of the accounts here; but how that was to be done, was to be left to the rules of practice of the Courts in Scotland.

*Wedderburn v. Wedderburn*, Sittings at Lincoln's Inn, February 29th, and March 4th, 1840.

#### Queen's Bench. [Before the Four Judges.]

##### PRINCIPAL AND AGENT.—EVIDENCE.

Where A. has for some time been acting as the general agent of B. in B.'s business, and has been in the habit of making contracts on his behalf, but B., after some disputes

between them, sends him express orders not to buy or sell on B.'s account beyond a certain limit, such restriction, if not known to the trade at large, will not affect the rights of a third person, with whom A. afterwards makes a contract exceeding the limits assigned him.

In such a case, evidence of a particular custom as to the trade, is not admissible to defeat the general rule of law, as to the liability of the principal for the acts of his agent.

This was an action for the non performance of a contract, for the delivery of a quantity of Russian tallow. The plaintiffs were merchants in London: the defendant was a merchant in St. Petersburg: and the contract in question was made in the month of April, 1835. It was made by a Mr. Woolmer, who acted as a broker for the plaintiffs, and by a Mr. Higginbottom, who was described as the general agent of the defendant in making sales of tallow, having been for some time employed by him in that character. The bought note was in this form: "Bought for Trueman & Co." so much tallow, and the note was signed by Woolmer. The sold note was: "Sold for Higginbottom to my principals," so much tallow, and this was also signed by Woolmer. The case was tried before Lord Denman at Guildhall, when the defence set up was, that the defendant had in March, 1835, given notice to Higginbottom not to act as defendant's general agent after the month of July in that year; that in the meantime he had been only authorized to sell 100 casks of tallow, and that the alleged sale to the plaintiffs, very largely exceeding that amount, had been made without proper authority. Evidence was also given to shew that the broker who acted for the plaintiffs had been informed of this notice, but, that he said he was quite satisfied with Mr. Higginbottom as the seller. Evidence of a custom in the tallow trade for a party to a contract to reject the principal and take the broker in his stead, was tendered, but the learned Judge refused to receive it. It was contended for the plaintiff in reply, that a private notice of this sort given in this case, restricting Higginbottom's power of selling, could not prevail against a general agency, and that the contract having been made before public notice of the cessation of the connection between the house of the defendant and Mr. Higginbottom had been given, the defendant was bound to fulfil that contract. The jury returned a verdict, finding that the contract was in fact made by Higginbottom on his own behalf; but that Woolmer when dealing with him believed that it was made on behalf of the defendant. The verdict was therefore entered for the plaintiff. A rule had since been obtained to set aside the verdict thus entered for the plaintiff, and to enter a verdict for the defendant or a nonsuit, on the ground that there was no proper contract within the statute of frauds &c., to fix the defendant, but that on the evidence in the case and on the face of the contract as shewn by the bought and sold notes, Higginbottom,

and not the defendant, must be treated as the principal, and also for a new trial, on the ground that the evidence of the custom in the trade had been improperly rejected.

*The Attorney General*, Sir W. Follett, and Mr. Greenwood in last Michaelmas Term, shewed cause against the rule. The defendant must be bound here; for the general authority he had given to Higginbottom to act as his agent had not been publicly revoked, and no private restriction of it as between Higginbottom and the defendant can be allowed to affect the rights of third parties. All the authorities establish this principle, that where a man has once appointed an agent, and given that agent credit in the world, he must recall that appointment as publicly as he made it, or he will continue to be bound by the acts of the agent. Evidence of a supposed custom in a trade is not admissible in answer to a general principle of law.

Sir F. Pollock, Mr. Cresswell, and Mr. Richards, in support of the rule.—The fact found by the jury in this case is an answer to the present action. The only name on the bought and sold notes is that of Higginbottom. Now *Siffkin v. Walker*<sup>a</sup> established that where a promissory note appeared on the face of it to be the separate note of A., it could not be declared on as the joint note of A. and B., though given to secure a debt for which they were jointly liable. The rule there was adopted in *Emly v. Lye*,<sup>b</sup> and the principle thus settled has always been recognised. It is clear, therefore, that here the broker must be taken to be the person with whom the contract was made. There is no evidence here to shew that the contract was binding on the defendant. The law will not allow that the person who appears, as Higginbottom does, on the face of the note to be the principal, may be shewn to be in fact only the broker. This instrument itself cannot be contradicted in this manner, but is decisive between the parties. *Ex parte Bolitho*,<sup>c</sup> *Bank of Scotland v. Watson*.<sup>d</sup> It cannot be said that in any contract of this sort Higginbottom necessarily meant Loder, merely because Higginbottom had had authority to act as agent for Loder. Suppose Higginbottom, instead of being agent for one, had been agent for six Russian houses, how would the question have been decided as to the parties for whom he sold? Why, of course, by the terms of the bought and sold notes. Now on the face of them, he was the contracting party. It is quite clear that evidence of the custom in the tallow trade was admissible, and ought to have been received; for the contract was made with reference to that custom.

Lord Denman, C. J.—There were two points in this case on which the defendant sought to relieve himself from the verdict which had been given against him for refusing to deliver to the plaintiffs a quantity of tallow, according to a contract said to have been entered

into by his agent on his behalf in the month of April, 1835. The plea was *non assumpsit*. The first objection on the part of the defendant was, that there was not proper evidence of the contract under the statute of frauds. The second was the alleged improper rejection of evidence.

This was an action to recover damages for the non-delivery of a cargo of tallow. The plaintiffs were merchants in London, and the defendant a merchant in St. Petersburg. The defendant had constituted one Higginbottom his agent in London, and Higginbottom had entered into a contract with the plaintiffs for the sale of a certain quantity of tallow. The contract was not performed, the defendant alleging that Higginbottom had exceeded his authority in making it. It appeared at the trial that disputes had arisen between the defendant and Higginbottom, and that the latter had received directions not to sell any tallow on behalf of the defendant except under certain restrictions; and it was alleged that the sale in question had been made in defiance of these restrictions. The defence on the merits was, that this change in the circumstances of the parties had induced Higginbottom to contemplate setting up for himself in the same trade as that in which he had before acted as agent for Loder; and that in fact he had made this sale on his own account. The jury found that in fact that was so, but that the plaintiff's broker at the time thought that Higginbottom had made the contract for the defendant in consequence of the long course of dealing which he had carried on upon the defendant's account. This, it was asserted, was a verdict for the defendant, but I thought that it amounted to a verdict for the plaintiff, and I directed it so to be entered. The motion for a new trial which has been made, must be refused by the Court, upon the facts, from which it clearly appears that Higginbottom had long been trading as the representative of the defendant; and that till the defendant gave notice to all the world that there was an end of the connection between him and Higginbottom, the world had a right still to consider that person as his agent. It is necessary for us to declare that we deliberately abide by the opinion that that is the correct rule. It is true that *Ex parte Bolitho*,<sup>e</sup> and *The Bank of Scotland v. Watson*,<sup>f</sup> shew expressly that an agent cannot bind his principal beyond the reach of the authority conferred by the principal, but in those cases the contracting party at the time of the contract, and long before, was carrying on two different concerns; the world knew him in two different characters, and was therefore bound to enquire in what character he appeared when acting in any particular matter. But here, Higginbottom was known exclusively as the agent of the defendant: having full authority so to represent himself, he formed the design of diverting a contract on the defendant's

<sup>a</sup> 2 Camp. 308.

<sup>c</sup> Buck, 100

<sup>b</sup> 15 East, 7.

<sup>d</sup> 1 Dow. 40.

<sup>e</sup> Buck, 100.

<sup>f</sup> 1 Dow's Parl. Cases, 40.

business to his own use, but the fraud of which he thus designed to be guilty cannot be allowed to operate so as to affect the rights of other parties, who had traded with him as the agent of a third person. Suppose a landed proprietor sent his steward to a neighbouring market, and that steward was to make a contract for seeds to be supplied for sowing land, though it was known that he had no land of his own to require the seeds, could his secret intention to make himself the owner of the articles, ordered apparently in the discharge of his master's business, deprive the owner of them of his right against the master, who had given the man credit with the world, by sending him into the market clothed with a particular character? There is no difference between the two cases; the bought and sold notes here are not inconsistent with this view of the case; they form a good and valid instrument within the provisions of the statute of frauds. They shew the authority to buy and sell, and the names of the parties, and they are complete in themselves. *Whitehead v. Tuckett*,<sup>g</sup> *Wilson v. Hart*,<sup>h</sup> and *Bailey v. Culverwell*,<sup>i</sup> are all cases that may be referred to, not as in point with the present, but as illustrations of the principle which is to govern it. *Siffkin v. Walker*,<sup>j</sup> recognised and acted on in *Emly v. Lye*,<sup>k</sup> have been cited for a different purpose; but the circumstances of those cases render them very clearly distinguishable from the present. The second point arose in the following manner:—the broker was called to prove the contract; on cross examination a question was proposed to be asked, whether it was not the practice in the tallow trade, that a party contracting directly with a broker, might afterwards reject his principal and take the broker. I refused to admit that question to be put. Evidence of that sort was afterwards offered in a formal manner, in the proof for the defendant, which I also rejected, and my brothers think that I was right. The result therefore, will be, that the defendant, being sufficiently proved to be the vendor, and the evidence offered to shift his liability not being admissible, the rule for a new trial must be discharged.

*Trueman and another v. Loder*, H. T. 1840.  
Q. B. F. J.

### Exchequer of Pleas.

#### LIEU.—SHERIFF.—EXECUTION.—TROVER.

Where goods are held by a party as a lien, they are not seizable under a writ of *scire facias*, and therefore, if seized and sold by the sheriff under such a writ, the bailee may maintain trover against him.

This was an action of trover, and the declaration alleged a property in the plaintiff, and conversion by the defendants. Plea, that the defendants seized the goods in question for the

purpose of levying £1,007*l.* 1*s.* 6*d.* by virtue of a writ of *scire facias* directed to the defendants, which was the conversion in the declaration mentioned. Replication, that before the time when &c. the goods in question were the property of one David Williams, and delivered by him to the plaintiff in the way of his trade of carver and gilder, who continued to hold them as a lien for work and labour bestowed on the said goods, and also by virtue of a special agreement as a security for the amount of certain bills of exchange, drawn by the said D. W. and accepted by the plaintiff; that the plaintiff up to this time when &c., had &c. but for the conversion aforesaid would still have had a lien upon the said goods. To this there was a demurrer on two grounds; first, generally, that goods held by way of lien were not exempted from being seized in execution; and secondly, that the replication was a departure from the declaration; the latter alleging a general property in the plaintiff, and the former only setting up a qualified one by way of lien. Joinder.

*Kennedy* supported the demurrer and contended, that although there is no precedent in point on the first question, yet the deductions to be drawn from other parts of the law, shew this seizure to be valid. For example, the sheriff may seize goods held in partnership, and sell the moiety belonging to the party against whom the writ is issued. *Haydon v. Heydon*,<sup>a</sup> *Dutton v. Monson*,<sup>b</sup> *Field v. ——*.<sup>c</sup> He may also sell the moiety of an interest in chattels real, *Duffil v. Spottiswoode*,<sup>d</sup> or in chattels personal, *Dean v. Whittaker*,<sup>e</sup> without being liable in trover. Then the replication is a departure from the declaration.

*Mellor*, in support of the declaration, submitted, that as a general principle of law, the sheriff can only seize such chattels as he can sell; *Civ. Dig. Executor*, C. 4; 2 *Tidd's Prac.* 1,003; and this principle is not interfered with by 1 & 2 *Vitell. c. 110, s. 12*, which empowers him to seize money and other securities, 1 *Chit. Arch.* 426, 7 Ed. A lien being merely a personal right to hold goods until a claim is satisfied, and which right is not assignable to any one else, the instant a party entitled to it gives up possession, the lien is gone. *Lickbarrow v. Mason*,<sup>f</sup> *Jacobs v. Latour & Parke*, B.—*Capper v. Dickington*,<sup>g</sup> is to the same effect.

*Mellor*.—The only exception to the rule is, when the expence of keeping the lien is more than its value; as in the case of an innkeeper, in whose possession an horse has been left, who when the horse has eaten out his value, may sell him for his keep at a fair appraisement.<sup>i</sup> In this respect, a lien varies very much from a common pledge by way of security, for in the latter case the lender may

<sup>a</sup> 1 *Salk.* 392.

<sup>b</sup> 17 *Ves.* 193.

<sup>c</sup> 4 *Ves.* 396.

<sup>d</sup> 3 *C. & P.* 435.

<sup>e</sup> 1 *C. & P.* 347.

<sup>f</sup> 6 *East.* 21.

<sup>g</sup> 5 *Bing.* 130; 2 *M. & P.* 20.

<sup>h</sup> 1 *Roll. R.* 215.

<sup>i</sup> 1 *Yelv.* 66.

<sup>g</sup> 15 *East*, 400.

<sup>h</sup> 7 *Taunt.* 295.

<sup>i</sup> 8 *Barn. & Cres.* 448. <sup>j</sup> 2 *Camp.* 308.

<sup>k</sup> 15 *East*, 7.

indemnify himself by selling the goods deposited, if the money be not repaid, *Pothonier v. Dawson*.<sup>k</sup> In respect to the second point this is no departure, for the replication alleges a special property in the plaintiff; and any right of property, either general or special, will support an action of trover.

*Parke, B.*—It is quite clear that this is not a departure.

*Kennedy* replied, (after having abandoned the second point) and contended, that the expression in the books that the sheriff can only seize what he can sell, must be taken to mean that he cannot seize property in its nature not capable of becoming the subject of sale, such as Bank notes, negotiable securities, &c. In the present case it might be competent to the sheriff to seize the goods, and by keeping them in his own possession, make them available towards the payment of the debt, without divesting the plaintiff of the property in them.

*Parke, B.*—The declaration here alleges a conversion by the defendants to their own use, which is not traversed by the plea, and although perhaps, the latter is bad, as amounting to the general issue, the objection has not been taken by special demurrer.

*Kennedy*.—*Lickbarrow v. Mason*, and the other cases which were cited to the same effect, were cases of waiver of lien by the owner parting voluntarily with the goods.

*Parke, B.*—The question here is, can the sheriff substitute as the owner of these goods a third person, between whom and the original owner there is no privity? It is quite clear, that by the general law, a sheriff can seize nothing in execution but what he can sell; that law remains except so far as altered by statute, and the recent act of 1 & 2 Vict. c. 110, s. 12, does not at all apply to the present case. A lien is a personal right to hold the goods of another party by way of pledge, until a debt is paid. The right of the bailee is altogether personal; he cannot dispose of those goods to another, nor can the sheriff, who subsequently comes into possession of them. The right of lien continues so long only as the goods remain in the possession of the party as a pledge, pursuant to the term of the original delivery. It is a right altogether personal, and consequently, differs materially from the case put in argument, where a term of years has been demised to a party, that the sheriff may sell, because it is a valuable interest, and may be the legitimate subject of a sale. But this lien is an interest which the bailee could not hand over to any one (unless perhaps, to a servant,) without being guilty of a conversion. If therefore these goods cannot be sold, neither can they be seized, for nothing is by law seizable that may not afterwards be sold.

*Alderson, B.*, and *Rolfe, B.*, concurred.

Judgment for the plaintiff.—*Legg v. The Sheriff of Middlesex*, H. T. 1840. Exch.

## CAUSE LIST, EASTER TERM, 1840.

### Queen's Bench.

NEW TRIALS remaining undetermined at the end of the sittings after Hilary Term, 1840.

*Michaelmas Term, 1834.*

Middlesex—*Scales v. Key Bart. and others*  
*Hilary Term, 1838.*

London—*Rawlins v. Desborongh, part heard*  
*Trinity Term, 1838.*

Middlesex—*Willis v. Bennett*  
*Michaelmas Term, 1838.*

London—*Corke v. Walker*

“ *Palmer v. Hembury*  
“ *White v. Teal*

Bedford—*Cirket v. Wing, clerk*

Gloucester—*Luxton, assignee v. Guppy*  
“ *Charlton v. Alway*  
“ *Bayles v. Lawrence*

Stafford—*Taylor v. Sheldon*

Worcester—*Doe d. Hartwright & others v. Fertday*

Lancaster—*Connell, one of the registered public officers, &c. v. Sawyer, and others*  
sued with Price

“ *Connell on behalf of the Northern Central Bank of England, v. Price*  
sued with others

“ *Reynolds, one of the public officers &c. v. Robinson and another*

“ *Hartley v. Wharton*

“ *Leadbitter v. Hart*

“ *Bamford v. Shuttleworth and others*

Cumberland—*The Queen v. Inhabitants of Maryport*

Northumberland—*Doe on the several demises of Nicholson v. Welford*

Derby—*Doe on the dem. of Sanforth v. Belfield, and another*

Somerset—*Fox, admor. &c v. Waters & another, exors. &c.*

Carnarvon—*Doe d. Wynne, Esq. v. Parry, clerk and others*

Carmarthen—*Evans v. Rees, Esq.*

County of Boro' of Carmarthen—*Davies v. Stacey, and another*

*Hilary Term, 1839.*

Middlesex—*The Queen v. Sarah Virrier*

“ *Sims admx., &c. v. Thomas, Esq. M. P.*

“ *Ladd v. Thomas and another*

“ *Smyth v. Boards*

London—*Poole v. Crowder and another*

“ *Geary v. Harvey, Esq., M. P.*

“ *The Birmingham, Bristol and Thames Junction Railway v. Locke*

“ *Hey v. Wyche*

“ *Lady Tufton & anr. v. Whitmore & anr.*

“ *Baker v. Baker*

“ *Sadler & others v. Whitmore & others*

“ *Bracey v. Carter*

“ *Abrahams v. Skinner*

“ *Hart v. Crowley*

*Easter Term, 1839.*

Middlesex—*Eden v. Dudfield*

“ *The Aylesbury Railway Company v. Thompson*

“ *Deliaser v. Towne*

“ *Lynch an infant v. Nurden*

“ *Hawkins v. Paxton*

“ *Doe d. Ive v. Scott and another*

“ *Milligan v. Wedge*

“ *Bennett exor. &c. v. Burton, clerk*

London—*Boorman and others v. Browne*

“ *Thompson and ors., exors. &c. v. Usborne*

“ *Same v. Same*

London—Rogers v. Custance  
 „ Enys v. Bennett and others  
 „ Bult and others v. Morrell and others  
 Lincoln—Doe d. Long and others, churchwardens  
 v. Dean and Chapter of Peterboro'  
 Leicester—Knight v. Mc. Douall and others.  
 Northampton—Doe d. Norton & ors v. Webster  
 Nottingham—Williamswo. extrie. &c. v. Fosbrooke  
 Sussex—Adnam v. Thompson  
 „ Boyce v. Ogle  
 Essex—Taylor v. Henniker, Bart. (*in case*)  
 „ Same v. Same (*in trespass*)  
 „ White v. Cutts  
 Hertford—White v. Donald  
 Gloucester—Doe d. Allen v. Allen and another  
 „ Hoare v. Scott  
 Salop—Smith v. Stanley  
 „ Lead v. Summers  
 Monmouth—Doe d. Thomas v. Beynon  
 Chester—The Mayor, Aldermen and Burgesses of  
 the City of Chester v. Peers (*in debt*)  
 „ Bunting v. Barlow (*in assumpsit*)  
 Radnor—Doe d. Crowther v. Drew  
 Carmarthen—Jones v. Downman  
 Cardigan—Jones v. Jones (*in replevin*)  
 Flint—Adams v. Jones  
 Norfolk—King v. Burrell  
 „ Rix v. Borton, Clerk and another  
 Cambridge—Mitchell v. Foster  
 „ Doe several demises of Thomson and  
 another v. Amey  
 Bedford—Smith wo. v. Smith  
 Suffolk—Doe d. Garrod v. Ollney and another  
 Bucks—Doe d. Farmer the elder v. Howe  
 Lancaster—Haigh and another v. Brooks  
 Lancaster—Bayley, gent., one, &c. v. Ashton  
 The Queen v. Sharp  
 Ridgway & others v. Ewbank & another  
 York—Tomlin v. Bowskill  
 „ Lockword, clerk v. Wood  
 „ Same v. Lund  
 „ Culverson v. Melton.  
 „ Bentham v. Martindale  
 „ The Queen v. Stamper and another  
 Northumberland—Stephenson v. Stainthorpe  
 Town and County } Gibson v. Kirk  
 of Newcastle }  
 Cumberland—Martindale v. Smith  
 Cornwall—Powning v. Leach and another  
 Somerset—The Queen v. Walter Irvine  
*Trinity Term, 1839.*  
 Middlesex—Dixon v. Thompson, sued, &c.  
 „ Banks v. Rough, sued, &c.  
 „ Nathan v. Irwin  
 York—Bacon v. Smith and another, assignees  
*Michaelmas Term, 1839.*  
 Middlesex—Poole v. Sedden and another  
 „ Stapleton v. Harper  
 „ Doe d. Lyster and others v. Goldwin  
 „ Lewis v. Reilly and another  
 „ Lane v. Mullins  
 „ Wilcoxon v. Walker  
 „ Meredith and another v. Simmons  
 London—Slifield, executrix, &c. v. Rivolta  
 „ Hankey & others, assignees, &c. v. Cobb  
 Essex—Chaney v. Payne  
 „ The Birmingham, Bristol, and Thames  
 Junction Railway Company v. Holford  
 Kent—Abington, Esq. v. Lipscomb  
 Surrey—Doe d. Angell v. Angell (Rawlings tenant)  
 „ Same v. Same (Barham, Tenant)  
 „ Gillon v. Watt  
 Lincoln—Carratt v. Morley and others  
 „ Same v. Same  
 „ Bonner, clerk v. Prest

Lincoln—Beadsworth v. Torkington  
 Leicester—Doe d. Sturges v. Ward and others  
 „ Fosbrooke v. Fosbrooke  
 Berks—Lock v. Sellwood  
 „ Sellwood v. Mount and others (*in trespass*)  
 „ Green v. Neale and another  
 Gloucester—Wintle v. Freeman  
 „ Same v. Same  
 Oxford—Doe d. Cozens v. Cozens  
 Devon—Beckford and others v. Skewes  
 „ Webber v. Richards  
 „ Neek, executor, &c. v. Smart  
 Hants—Doe d. Fleming, Esq. v. Snook & another  
 Cambridge—The Queen v. Brown, clerk, & anor.  
 Cambroke—Baron de Rutzen and Wife v. Farr  
 Perdigan—Doe d. Davies v. Davies  
 Carmarthen—Lang and others, surviving executor  
 and executrix v. Nevill and anor.  
 Westmoreland—Fisher, clerk v. Birrell & anor.  
 Northumberland—The Queen v. Barkman, clerk  
 „ Brunton and others v. Hall  
 „ Nixon v. Nanney, Esq.  
 Lancaster—Smith v. Burdekin  
 „ Richardson v. Dunn  
 „ Fielden v. Sedden & others, executors  
 and executrix  
 „ The Masters, Wardens, and Society of  
 the Art and Mystery of Apothecaries of the City of London v.  
 Greenough.  
 „ Green and others v. Smithies  
*Hilary Term, 1840.*  
 Middlesex—Mason v. Paynter, Esq.  
 „ Baker v. Woollams and another  
 „ Blagg v. Aston  
 „ Scott v. Parker  
 Hickey v. Edginton  
 „ Conelly v. Holt  
 „ Curlewis v. Corfield  
 London—The Queen of Portugal v. Rothschild  
 and others  
 „ Niven & another v. Devaux & another  
 „ The London Grand Junction Railway  
 Company v. Gunston  
 „ Same v. Graham, M. D.  
 „ Wheeler v. Montifiore and others  
 „ Thompson v. Stuart  
 COURT IN BANCO.  
 PEREMPTORY RULES.  
*for Easter Term, 1840.*  
 First Day.  
 Wilton, gent., one &c. v. Chambers  
 Spencer Esq., public officer v. Newton, a prisoner  
 Bottrell v. Wordsworth and another  
 Knight v. M'Dowall and others, *in replevin*  
 Same v. Same, *in replevin*  
 Middlesex—The Queen v. The Justices of Middle-  
 sex, St. Pancras *appeal*  
 „ The Queen v. The Justices sitting at  
 Hatton Garden Police Office  
 Ord and another v. Barrow and another  
 Plummer v. Hudson  
 Jolly and another v. Baines  
 Ely—The Queen v. Lords and Steward of the  
 manor of Whichford  
 „ Head v. Baldrey  
 Norwich—The Queen v. John Cozens and others  
 „ The Queen v. Thos. Osborn Springfield  
 Colls and others v. Coates  
 Lancaster—The Queen v. Churchwardens of Man-  
 chester  
 „ Lord Howden v. Simpson, Knt.  
 Gloucester—The Queen v. The Gloucester and  
 Birmingham Railway Company

*Second Day.*

**Leicester**—The Queen v. The Leicestershire and Northamptonshire Union Canal Co.

**Kent**—The Queen v. Justices of the Cinque Ports  
Fenton v. Dimes

**W. R. Yorkshire**—The Queen v. The Justices of the West Riding

In the matter of arbitration between Alex. Bower and ors.

South Eastern Railway Company v. Hebblewhite

Same v. Barnes

The Queen v. The Mayor &c. of Ludlow

Wilton v. Chambers

Evans v. Rees, otherwise &c.

**Yorkshire**—The Queen v. Trustees of Dewsbury and Gomersall Roads

**Lancaster**—The Queen v. Archibald Pentice and another

**Liverpool**—The Queen v. George Quayle

**Carnarvon**—The Queen v. Henry Ramsey Williams

*Third Day.*

South Eastern Railway Company v. Trougbear

South Eastern Railway Company v. Wright

Same v. Hamer

Same v. Banner

The Eastern Counties Railway Company v. Cooke

Same v. Fairclough

The Master, Wardens &c. of Apothecaries of London v. Harrison

**Bedford**—The Queen v. Inhabitants of Barton

**Worcester**—The Queen v. Justices of Worcestershire

**Essex**—The Queen v. The Southend Pier Compy.

*Fourth Day.*

**Middlesex**—The Queen v. Theobald O'Doherty

**England**—In the matter of a *habeas corpus* issued for John Easton, a smuggler

**Middlesex**—The Queen v. James Stewart and another, overseers of St. George, Hanover Square.

**BAIL COURT.****PEREMPTORY RULES.**

For Easter Term, 1840.

*First Day*

Archer v. Kearse

Doe on the several demises of Mudd and another v. Roe

Owen v. Williams

Wright v. Lewis and another

Doe d. Wright and others v. Smith

Robbins, executrix &c. v. Robinson

Mitchell v. Law

Herring v. Dorrell and another

Ipswich—The Queen v. William Buller

Suffolk—The Queen v. Justices of Suffolk

**England**—The Queen v. The Sheriff of Surrey

**Middlesex**—The Queen v. The Justices of Middlesex

**Herefordshire**—The Queen v. The Justices of Herefordshire

**Yorkshire**—The Queen v. The Inhabitants of Walton

**Durham**—The Queen v. The Inhabitants of Barnard Castle.

*Second Day.*

Turner v. Harman

Same v. Same

Gray, administrator, &c. v. Leaf, executor, &c.

Neale v. Postlethwaite

In the matter of arbitration between William Jardine and Robert Owen

Ker, the elder, and others v. Ford

Watkins v. John and another

Ford v. Middleton

Ex parte John Peter Holloway, Esq., and also Ann Holloway, in the matter of Richard Attwood, Gent. one &c.

Doe on the dem. of Pitcher v. Roe

Same v. Same

In the matter of arbitration between Josh. Ward, Gent. and Samuel Ford.

*Third Day.*

Elliot v. Hendrick

Hobson v. Wadsworth, sued &c.

Thorpe v. Burgess

Coppin v. Hunter

Hooper v. Lewis and Wife

Nye and another v. Thompson

Davison and another, executors, &c. v. Thompson

**SPECIAL PAPER.***Easter Term, 1840.*

\*Archbishop of York & ors. v. Trafford & ors.

\*Doe d. Hamilton v. Clift

Wise v. Hodsell

\*Doe d. Blewitt v. Phillips

Smales v. Tyerman

White, administrator &c. v. Rose

\*Hawthorn & others, assignees &c., v. The Newcastle-upon-Tyne and North Shields Railway Company

Lane v. Chapman

Bottrell v. Wordsworth

\*Doe d. Lord Grantley v. Butcher & others

Littler v. Thompson

Dowell v. Hodgson, Esq. & another

Savory, assignee, &c. v. Chapman, Esq.

Hasleden & another v. Alinond

Horner v. Keppel

Strachan assignee &c. v. Thomas, Esq.

Bayntun v. Bayntun

White v. Ruby

Friend who sues, &c. v. Butterfield

Bowler v. Nicholson

+Doe d. Sabin & ors. v. Sabin, *special verdict*

Billing v. Suffell

Harper v. Janson the younger

Jones & another v. Edwards

\*Woodland & anr., assignees &c. v. Fuller & anr\*

\*Doe d. Booley & ors. v. Roberts

England v. Davidson

Skipp v. Lockwood

Dayrill v. Hoare and others

Scott v. Hoare and others

Levy v. Duthie

Same v. Duncombe, Esq.

Tidd v. Foskett

Bernhard v. Warwick

\*Doe d. Lean v. Lean & others

Price and Wife v. Rolt and Wife

Colls & others v. Dauncey, *first action*

Same v. Dauncey, *second action*

Field v. Adames & others

Fisher v. Foord

Kinnersley v. Quested

Ford v. Lefevre

\*Bennett v. Burton

Sowdon v. Cooper

Thompson v. Few

\*The Chancellor of the University of Oxford v. Cook

Hewitt v. Hewitt

\*Andrews v. Marris & another

Smith v. Kean

Sunt & another, assignees &c. v. Robins

Jobling v. Brown

Danby v. Hope

\*Steavenson v. The Mayor &c. of Berwick-upon-Tweed.

Weedon v. Tynte  
 Same v. Same  
 + Sanders & others v. Vanzeller, special verdict  
 Hughes v. Done  
 Gladman v. Gosling  
 Price v. Steele  
 Gladman v. Gosling  
 Simpson v. Williams  
 Williams v. Astley, Bart.  
 \* Doe d. Jones & others v. Pearce  
 Stocks v. Roberts & others, in replevin  
 Greatorex v. Brook  
 \* Hunt v. Burnell, Esq.  
 Sherman v. Thompson  
 Plumbe and Wife v. Bould  
 Howden v. Haigh & another

Marked \* are special cases; + special verdicts;  
 The rest are demurrers.

## Common Pleas.

## REMANET PAPER OF EASTER TERM.

3d VICTORIA, 1840.

*Enlarged Ruler.*

To 4th day—Medley & ors. v. Pritchard & anor.  
 5th day—Cole v. Grove and another  
 " Huthwaite, administrator v. Phaire  
 " Messenger v. Southey  
 " In re Baker and Baker  
 6th day—Ingram & anor v. Blyth & anor  
 " Vaughan v. Brine and others  
 Enlarged generally—Clare v. Blacksley

**New Trials of Michaelmas Term, 1838.**  
 Stafford—Attwood v. Taylor and others  
 " Same v. Same  
 Yorkshire—Newton & Ux v. Harland & anor.

**New Trials of Hilary Term, 1839.**

Middlesex—Long v. Bilke  
 London—Gibson & ors., assignees, &c. v. Bennett  
 " Gould and others v. Oliver  
 De Pinna v. Carroll and another  
 Steinkeller v. Newton  
 Fawcett & another v. Frost and another  
 Edwards and others v. Scott and another  
 Fergusson & ors., asses. v. Spencer & an.  
 Magnay v. Knight  
 Brandon v. Smith  
 Hoye v. Bush

**New Trials of Easter Term last.**

Middlesex—Stewart v. Crump  
 " Malins v. Freeman, settled  
 " Doe (Goodbody and others) v. Freeman, settled  
 " Wilson v. Lewis  
 " Wollaston and others v. Hakewell  
 " Archer v. English and another  
 " Ritchie v. Wilson  
 " Tyrrell v. Woolley  
 London—Morris and another v. Stamp  
 " Lamburn v. Cruden  
 " Abbott v. Hendricks  
 Chester—Pernley v. Worthington  
 Merioneth—Probyn v. Edwards

**New Trials of Trinity Term last.**

Middlesex—Drewry v. Hodson  
 London—Hope v. West

**New Trials of Michaelmas Term last.**  
 Middlesex—Harris v. Goodwyn, administratrix  
 " Fisher v. Dewick and another  
 London—Startup v. Macdonald  
 Smith v. Brandram  
 Franklin v. Spencer  
 Glynn v. Houston

Piggins, jun. v. Earl Brooke and Earl Warwick  
 London—Evans v. Hills  
 " Southampton Dock Company v. Richards  
 Surrey—Grand Surrey Canal Company v. Hall  
 " Ibbotson v. O'Brien

Bristol—Philpotts & ors. v. Procter & anor.  
 Devon—Rees and another, assignees, v. May  
 Suffolk—Roberts v. Snell  
 Oxon—Harrison v. Fane  
 Monmouth—Maud v. Stonehouse and others  
 Worcestershire—Baylis v. Strickland and others  
 Pembroke—Doe (Howell) v. Thomas  
 Radnor—Doe Williams and others v. Lloyd

**New Trials of Hilary Term last.**  
 Middlesex—Galloway and another v. Bleaden

" Munn v. Johnson and others  
 " Bartholomew v. Carter  
 " Davey and another v. Phelps  
 London—Deacon and ors. v. Stodhart and others  
 " Same v. Same  
 " Lees v. Berry  
 " Chairman and another v. Count  
 " Brown v. Edgington  
 " Wimhurst v. Bowker  
 " Gillett and another v. Chapman  
 " The Southampton Dock Company v.  
 Arnett  
 " Same v. Smith

*Cur. Ad. Plk.*

Bonzi v. Stewart  
 Same v. Same  
 Earl Mansfield v. Blackburne  
 Same v. Same  
 Devaux and another v. Steele  
 Morrell v. Martin  
 Beckett v. Wood  
 Luckin v. Simpson  
 Brook and others, assignees v. Mitchell and ors.  
 Doe d. Cape and others v. Walker  
 Myers v. Marston, public officer  
 Cusack and another do. do.  
 Whittenbury v. Law do.

**DEMURRER PAPER.**

Wednesday 15th April  
 Thursday 16th "  
 Wednesday 22d "  
 Thursday 23d "  
 Friday 24th "  
 Saturday 25th "  
 Monday 27th "  
 Tuesday 28th "

} Motions in arrest of  
 } Judgment

**SPECIAL ARGUMENTS.**

*Wednesday 25th*  
 Bruce, jun. v. Waite and another, partly heard  
 Thornton v. Jenyns, clerk, and others  
 Hinde and others v. Gray, partly heard  
 Middleton v. Chambers  
 Hodges v. Same  
 Waller v. Lacy  
 Ashdown v. Burgess  
 Bristow v. Fairclough  
 Thompson and another v. Farden and others  
 Walbacke v. Allen, jun.  
 Smith and others v. Nicholles  
 Crawshay and others v. Barry  
 Drummond and others v. Lowther  
 Brandon v. Barnett and others  
 Hallewell and another v. Morell Robert, and  
 with others  
 Hall v. Bainbridge  
 Doe d. Burrin v. Charlton  
 Acland v. Pring, executrix



Thursday ..	23	Motions.
Friday ..	24	Short Causes and Unopposed Petitions previous to general Paper.
Saturday ..	25	
Monday ..	27	Pleas, Demurrs, Exceptions, Causes, and Further Directions.
Tuesday ..	28	
Wednesday ..	29	
Thursday ..	30	Motions.
Friday May 1		Short Causes and Unopposed Petitions previous to general Paper.
Saturday ..	2	Pleas, Demurrs, Exceptions, Causes, and Further Directions.
Monday ..	4	
Tuesday ..	5	
Wednesday ..	6	
Thursday ..	7	Motions.
Friday ..	8	Short Causes and Unopposed Petitions previous to general Paper.
Saturday ..	9	Pleas, Demurrs, Exceptions, Causes, and Further Directions.
Monday ..	11	
Tuesday ..	12	
Wednesday ..	13	Motions.

**Before the Master of the Rolls.****AT WESTMINSTER.**

Wednesday Apr. 15	Motions
Thursday ..	16 Petitions in General Paper.
Wednesday ..	22 { Pleas, Demurrs, Causes, Further Directions, and Exceptions.
Thursday ..	23 Motions.
Friday ..	24
Saturday ..	25 { Pleas, Demurrs, Causes, Further directions, and Exceptions.
Monday ..	27
Tuesday ..	28 { Further directions, and Exceptions.
Wednesday ..	29
Thursday ..	30 Motions.
Friday May 1	
Saturday ..	2 { Pleas, Demurrs, Causes, Further Directions, and Exceptions.
Monday ..	4
Tuesday ..	5
Wednesday ..	6
Thursday ..	7 Motions.
Friday ..	8 { Pleas, Demurrs, Causes, Further Directions, and Exceptions.
Saturday ..	9 { Further Directions, and Exceptions.
Monday ..	11 {
Tuesday ..	12 Petitions in General Paper.
Wednesday ..	13 Motions.

**AT THE ROLLS.**

Thursday .. 14 } Short Causes after Swearing in the Solicitors.

Short causes, Consent causes, and Consent petitions, every Tuesday at the sitting of the Court.

**EXCHEQUER SITTINGS.**

*In Easter Term, 1840.*

		Banco.	Equity.
Wednesday Apr. 15		- - -	Lord Abinger
Thursday ..	16	{ Peremptory paper	Ld. Abinger
Monday ..	27	Special paper	
Tuesday ..	28	- - -	Lord Abinger
Wednesday ..	29	Special paper	
Friday May 1		- - -	Lord Abinger
Saturday ..	2	Crown Cases	Lord Abinger
Monday ..	4	Special paper	

Tuesday	May 5	Errors	Lord Abinger
Wednesday ..	6	Special paper	
Saturday ..	9	- - -	Lord Abinger
Monday ..	11	- - -	Lord Abinger

**LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.****Royal Assent.**

Bolton Small Debts Court. *3d April.*

**House of Lords.**

Copyholds Enfranchisement. Ld. Brougham.  
[In Select Committee.]

For facilitating the Administration of Justice.  
[For second reading.] Lord Chancellor.

For the commutation of Manorial Rights.  
[For second reading.] Lord Redesdale.

For defining the powers of the Metropolitan Police Justices.  
[Passed.] Marquis of Normanby.

For giving Summary Protection to the publication of Parliamentary Papers.  
[In Committee.]

Newton Abbott Small Debts Court.  
[For second reading.]

**House of Commons.**

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.  
Small Debt Court for Newton Abbott [Passed.]

To improve the High Court of Admiralty.

[For second reading.] \* \* \* The other Bills remain as previously stated.

**AMENDMENTS IN PRINTED PAPERS BILL.**

The amendments proposed by Lord Denman are, that the defendant is to bring before the Court or a Judge an affidavit of the parliamentary papers &c. duly authenticated, whereupon the Court or Judge shall stay the proceedings. No costs are to be allowed the plaintiff, but costs to the defendant in the discretion of the Court or Judge. The truth of the libel established in a former action, for any extract or abstract of such paper shall be a good defence.

**THE EDITOR'S LETTER BOX.**

The grievance of an Articleclerk; the suggestions on the Lord Chancellor's Bill; and "A Subscriber's" letter on the privileges of attorneys shall be attended to.

We have this week printed all the Common Law Lists of Causes, and our next number will contain the Equity Lists.

The case in which it was decided that a warrant of attorney should be set aside because the attorney who attested the execution had not renewed his certificate, shall be given next week. We are obliged to a friend for the particulars.

"A constant reader" is informed that he must keep twelve terms before he can be called to the Bar. We believe there is no difference in the requisite number of dinners at the several Inns.

# The Legal Observer.

SATURDAY, APRIL 18, 1840.

— — "Quod magis ad Nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE LAW RELATING TO LETTERS OF MARQUE AND REPRISALS.

We shall here shortly state the law relating to letters of marque and reprisal.

Letters of marque and reprisal have been grantable by the law of nations whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs.<sup>a</sup> The power of issuing these letters of marque belongs to the Crown as a branch of its prerogative, but the mode in which they shall be issued is regulated by statute.

The first statute relating to the subject is the 4 Hen. 5, c. 7, which enacts that in case of breach of truce by enemies, letters of marque shall be granted to the parties grieved, who may complain to the Keeper of the Privy Seal, who shall make for the complainant (if he so require) letters of request of restitution under his seal in due form; and if restitution be not made accordingly within a reasonable time, the Lord Chancellor of England shall cause to be made out to him letters of marque in due form, "and by virtue of these (says Blackstone)<sup>b</sup> he may attack and seize the property of the aggressive nation without hazard of being condemned as a robber or pirate." But the modern practice is to empower the Lord High Admiral, or the Commissioner of the Admiralty, to grant commissions to the owners of armed ships or privateers, and the prizes captured are di-

vided according to a contract entered into between the owners and the captain and crew of the ship. But the owners, before the commission is granted, are obliged to give security to the Admiralty to make compensation for any violation of treaties between those powers with whom the nation is at peace, and they must give security that the ship shall not be employed in smuggling."<sup>c</sup>

An act is now usually passed on each occasion, reciting either that war has commenced, or that an order in council has been issued ordering general reprisals, and by this act, the shares in the prizes, and the Court for adjudicating them, are particularly regulated. But these statutes do not affect the royal prerogative in the slightest degree.<sup>d</sup>

Letters of marque and reprisal granted by the Crown are liberally construed, but may be vacated in three ways; 1st. by express revocation, but this is only allowable in the case of letters patent granted during war; when granted in time of peace and unsatisfied, it is otherwise; though 2dly, even in such case, the cessation of hostilities will defeat the rights granted; 3dly, these letters may be vacated by the misconduct of the grantees, as by cruelty, &c.

The reprisals granted by the law of England, according to a learned writer,<sup>e</sup> are of two sorts, ordinary or extraordinary. The ordinary are within the realm or without, and are always granted when any English merchant, or his goods are spoiled or taken from him in parts beyond the sea

<sup>a</sup> Grotius de jure, b. and p. l. 3, ch. 2, ss. 4 & 5; 1 Bla. Com. 258.

<sup>b</sup> 1 Com. 259.

<sup>c</sup> 1 Blackstone by Stewart. p. 271.

<sup>d</sup> Chitty on Prerog. 42.

<sup>e</sup> Molloy, Book I. Chap. 2.

by merchant strangers: and if he cannot, upon suit, or the king's demanding justice for him, obtain the same, he shall have, upon testimony of such prosecution, a writ out of the Chancery to arrest the merchants of that nation, or their goods here in England, the which is grantable to the subject oppressed of common right by the Chancellor or Keeper, of England, who always in such case hath the approbation of the King or Council, or both, for his so doing; the other, which is for satisfaction out of the realm, is always under the Great Seal. The extraordinary reprisals are by letters of marque for reparation at sea, or any place out of the realm, grantable by the Secretaries of State, with the like approbation of the King or Council, or both; but they are only during the King's pleasure, and to weaken the enemy during the time of war, and may at any time be revoked.

The ordinary practice at present, as we conceive is, first, by order in Council to grant general reprisals, by which the King's ships proceed alone against the ships, goods, and subjects of the aggressive na-

tion; and that the property obtained is held by them for the benefit of the persons injured.<sup>s</sup> And then, if this is not sufficient, by a further order in Council, general reprisals will be granted, "so that as well his Majesty's fleet and ships, as also all other ships and vessels that should be commissioned by letters of marque or general reprisals, or otherwise, by his Majesty's Commissioners for executing the office of Lord High Admiral of Great Britain, shall and may seize all ships, &c."<sup>h</sup> and under this latter order, privateers will be commissioned.

The power which is granted by the letters of marque and reprisal, should be restrained in its operation to the subjects of the offending state; a clause, therefore, in a charter, giving power to seize the goods of every person, is illegal and void.<sup>i</sup> But where a vessel was cruising under letters of marque against one state—as, for instance, against France—Lord Stowell held, that she was at liberty, on obtaining notice of hostilities commenced against another country, as Spain, to capture a Spanish vessel with the same advantage to himself as if the prize had been French.<sup>j</sup>

<sup>s</sup> Of this nature is the order in council just issued, which is as follows:

"ORDER IN COUNCIL.—At the Court at Buckingham Palace, the 3d day of April, 1840. Present, the Queen's most excellent Majesty in Council.—Her Majesty having taken into consideration the late injurious proceedings of certain officers of the Emperor of China towards officers and subjects of her Majesty; and her Majesty having given orders that satisfaction and reparation for the same shall be demanded from the Chinese government; and it being expedient that, with a view to obtain such satisfaction and reparation, ships and vessels and cargoes, belonging to the Emperor of China and to his subjects, shall be detained and held in custody; and, that if such reparation and satisfaction be refused by the Chinese Government, the ships and vessels and cargoes so detained, and others to be thereafter detained, shall be confiscated and sold,—and that the proceeds thereof shall be applied in such manner as her Majesty may be pleased to direct: her Majesty, therefore, is pleased, by and with the advice of her privy council, to order, and it is hereby ordered, that the commanders of her Majesty's ships of war do detain and bring into port, all ships, vessels, and goods belonging to the emperor of China, or his subjects, or other persons inhabiting within any of the countries, territories, or dominions of China; and in the event of such reparation and satisfaction as aforesaid having been refused by the Chinese Government, to bring the same to judgment in any of the Courts of Admiralty within her Majesty's dominions: and to that end, her Majesty's

Advocate-General with the Advocate of the Admiralty, are forthwith to prepare the draft of a commission, and present the same to her Majesty at this board, authorizing the commissioners for executing the office of Lord High Admiral to will and require the High Court of Admiralty of Great Britain, as also the several Courts of Admiralty within her Majesty's dominions, to take cognizance of and judicially proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships, vessels, and goods, that are or shall be taken; and to hear and determine the same according to the course of Admiralty, and the laws of nations, to adjudge and condemn all such ships, vessels, and goods, as shall belong to China, or subjects of the Emperor of China, or to any others inhabiting within any of his countries, territories, or dominions: and that such powers and clauses be inserted in the said commission as have been usual and are according to former precedents; they are, likewise to prepare and lay before her Majesty at this board, a draft of such instructions as may be proper to be sent to the Courts of Admiralty in her Majesty's foreign governments and plantations for their guidance herein: and the said commissioners are to give the necessary directions herein accordingly.

C. C. GREVILLE.

<sup>h</sup> See the preamble of 45 Geo. 3, c. 72.

<sup>i</sup> *Nightingale v. Brydges*, 1 Show. 137.

<sup>j</sup> *The Sacra Familia*, 5 Rob. Ec. R. 360.

## CHANCERY REFORM.

### THE MASTERS' RETURNS.

CHANCERY REFORM is now, we think, proceeding in the right direction. We recently laid before our readers the returns of the Six Clerks,<sup>a</sup> and we have now before us those of the Masters; and we must say, that they appear to us fully to bear out the assertion in our last number, that the office, as now constituted, is much too indulgent to the weakness of human nature—that the work is unequally divided, and that there is too wide an option given to the Master as to whether he will work or not. This may easily be proved in a very few lines. The returns relate to the years ending Michaelmas Term 1838 and Michaelmas Term 1839. In 1838 Master Dowdeswell attended 166 days, and in 1839, 193 days, and the average number of hours exceeded five, but did not amount to six. Master Farrer attended, in 1838, 191 days, and in 1839, 194 days, and was occupied four and three-quarters of an hour. Sir Giffin Wilson attended, in 1838, 183 days, and in 1839, 194 days, and was occupied four hours and upwards. Lord Henley, in 1838, attended 181 days, and was occupied four hours minus  $7\frac{1}{2}$  minutes; and in 1839, 190 days, and was occupied three and three-quarters of an hour.

Mr. William Brougham attended, in 1838, 215 days, and was occupied from five to six hours a-day, and in 1839, 228 days, and was occupied the same time. Mr. Lynch, in 1839, attended 211 days, and was occupied six hours and a quarter a-day. Mr. Senior attended, in 1838, 162 days, and was occupied rather more than four hours, and in 1839, 176 days, and was occupied nearly three hours and three-quarters.

Sir William Horne and Mr. Duckworth's returns, owing to their recent appointment, we may pass over, simply stating that Sir William Horne, since his appointment, has attended from five to six hours, and Mr. Duckworth six hours.

It is thus quite clear that some of the Masters are occupied *just double the number of hours* that others are. Let us refer to the year 1839, and we shall see that in that year Lord Henley was occupied in his office about 633 hours, and that Mr. Wm. Brougham was occupied about 1254 hours, or nearly double: that while Mr. Senior contented himself with about 660 hours'

work in his office, Mr. Lynch gave 1318 hours, or more than double; and that, although the contrast is not so great in the other offices, yet the attendance seems to have been regulated entirely by the inclination of the individual Master. If it be said that the work is done elsewhere, we cannot allow this to be a valid defence, because extra time may have been given as well by those who work most as by those who work least in their offices. The public has a right, as we submit, to the services of the Master in his office for a reasonable time; and we must say that we do not consider even six hours a-day, with about three months vacation in the year, too hard work to require of all the Masters.

There are several other points in this return to which we shall hereafter refer; but, for the present, we shall leave the matter to the consideration of our readers.

## NEW ORDER FOR THE APPOINTMENT OF EXAMINERS OF SOLICITORS.

*Wednesday, the 15th April, 1840.*

I DO HEREBY ORDER and appoint that Joseph Bicknell, Richard Mills, George Gatty, and John Wainwright, Sworn Clerks in Chancery, together with John Teesdale, Thomas Metcalfe, Thomas Adlington, Robert Ridgell Bayley, William Loxham Farrer, George Frere, James William Freshfield, Bryan Holme, William Lowe, Edward Rowland Pickering, William Tooke, and Richard White, Solicitors of the Court of Chancery, be Examiners, until the last day of Easter Term 1841, to examine every person (not having been previously admitted an Attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them) who shall apply to be admitted a Solicitor of the said Court of Chancery, touching his fitness and capacity to act as a Solicitor of the said Court: And I do hereby direct that the said Examiners shall conduct the examination of every such applicant as aforesaid, in the manner and to the extent pointed out by the Order of the 27th day of July, 1836, and the Regulations approved by me in reference thereto, and in no other manner and to no further extent.

LANGDALE, M. R.

## NEW BILLS IN PARLIAMENT.

### PAROCHIAL ASSESSMENTS.

This is a bill to explain and amend the act to regulate parochial assessments. It recites

<sup>a</sup> See ante, p. 437.

the 7 W. 4, c. 96, "An Act to regulate parochial assessments." The proposed enactments are

1. That the justices acting in and for every borough, cinque port, town corporate, liberty and franchise, shall four times at least in every year, hold special sessions for the purpose of hearing and determining any appeals against the poor rates of any parish within the said borough, cinque port, town corporate, liberty or franchise, and for such purposes shall have the same powers as are given in the said recited act to the justices acting in and for every petty sessions division, subject to the same right of appeal from their decision to the general or quarter session of the peace for such borough, town corporate, or other place, as is reserved in and by the said act.

2. That the same remedy by appeal to justices at special sessions which is given by the said first recited act, or by this act, to persons who may consider themselves aggrieved by any rate made and levied for the relief of the poor of any parish, shall be extended to and construed to apply to every rate which shall be made for the repair of the highways of any parish or place, under the provisions of 6 W. 4, intituled, "An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England," or any other act which has been or shall be hereafter passed for the general regulation of the highways.

3. Rate not to be allowed out of sessions, nor altered after allowance, except on appeal. Penalty on overseers, &c. for neglect in making and setting forth the rate.

4. Justices at quarter sessions may appoint inspectors of rates. Inspector authorized to appeal on behalf of the county against the parochial rates.

5. Inspectors' expences to be paid out of county rate.

6. That the poor law commissioners shall be and they are hereby empowered to issue orders for surveys and valuations of parishes upon such representations as are required by the said first recited act from time to time as often as they shall deem requisite, and to amend, alter, suspend or rescind any order for the making of any survey and valuation which they may have issued or may hereafter issue.

7. Interpretation clause.

8. Act to apply only to England and Wales.

#### ATTORNEYS WITNESSING COGNOVITS.

*To the Editor of the Legal Observer.*

Sir,

The following decision, given a few days ago by the Chief Justice of the Common Pleas, may be of some practical service to my professional brethren.

In September of last year, the defendant being about to execute a cognovit, procured an attorney (whom I have known in practice for years) to attest the execution of the instrument

on his behalf. Before this was done, the question was put to him in the presence of the defendant, "whether he was an attorney of one of the Superior Courts?" He replied, "that he had been a practising attorney for upwards of forty years, and was then duly qualified."

The defendant made two payments on the *cognovit*, after which he took out the present summons to shew cause why the *cognovit* should not be set aside on the ground that his own attorney (the subscribing witness) had not taken out his certificate for the year 1839, of which circumstance he (the defendant) was not aware when he required him to attest his signature.

On enquiring, it was found, that this attorney took out his certificate in February, 1838, which expired on the 15th of November in the same year, and that he had not renewed it since.

On the hearing of the summons at Chambers, it was contended on the part of the plaintiff that the *cognovit* having been executed within the twelve months allowed for the renewal of the attorney's certificate, the attestation was sufficient; also that the defendant ought not to be allowed to take advantage of his own wrong doing, as it was he himself who held out this attorney as being properly qualified, and the plaintiff could have no means of ascertaining whether he had taken out his certificate or not.

The Chief Justice, certainly with much reluctance, held that the *cognovit* was not duly executed, and made the order to set it aside on the authority of *Verge v. Dodd*, E. 11 Geo. 4, K. B., referred to in Tidd's Supplement to the 9th edition of his Practice.

After this decision it will not be prudent to receive a *cognovit* as executed, unless the name of the subscribing witness is found in the Law List last published, and even then a period will intervene from the 15th of November until the republication in March, against which I don't know how the plaintiff's attorney is to secure himself, unless indeed he requires the production of the certificate itself.

C.

#### RE-ADMISSION OF ATTORNEYS.

[*Last day of Easter Term, 1840.*]

- Bretherton, James, Gloucester.
- Bossey, John Meggit, Howden, York.
- Battiscombe, William Henry, Bristol.
- Barton, George, Rugby.
- Crampton, John Norman, Rochester.
- Hayward, Phillip, 14, Buckingham Street Strand.
- Knight, James, Burton-upon-Trent.
- Lamb, William Ellis, Witney and Bampton, Oxon.
- Leighton, Thomas, 33, Upper King Street, Bloomsbury.
- May, Phillip, 15, Elizabeth Street, Eaton Sq.
- Thomas, George, Swansea.
- Wright, Thomas Skeles, 6, Bucklersbury, and 9, Union Street, Blackfriar's Road.

## ATTORNEYS TO BE ADMITTED.

*Trinity Term, 1840.*

<i>Clerks' Name and Residence.</i>	<i>To whom articled and assigned.</i>
Arundell, James Whitton, 17, Victoria Road, Gloucester Road, Kensington ; and 18, New Millman Street.	John Thomas Miller, 3, Furnival's Inn ; and James Taylor, 15, Furnival's Inn ; assigned to Alfred Bell, 59, Lincoln's Inn Fields.
Ashton, William Henry, Stockport.	Charles Hudson, Stockport.
Alman, Michael, Bristol ; 11, New Ormond Street ; and Hammersmith.	William Bevan, Bristol.
Alderson, Alfred, 189, Fleet Street ; and Carnarvon.	Robert Williams, Carnarvon.
Arnold, John, the younger, Birmingham.	John Arnold, the elder, Birmingham.
Adney, John, Wool Bridge, near Wareham, Dorset.	Septimus Smith, Blandford Forum ; assigned to Thomas Pearson, Essex Street, Strand.
Adamson, William, 35, Marchmont Street ; and Newcastle-upon-Tyne.	John Adamson, Newcastle-upon-Tyne ; assigned to John Trotter Brocket, Newcastle-upon-Tyne.
Baines, John George Fuller, 6, Featherstone Buildings ; and Needham Market.	Frederick Hayward, Needham Market.
Banner, Edward, 6, Sidmouth Street, Regent Square ; and Toxteth Park, near Liverpool.	Matthew Dobson Lowndes, Liverpool.
Bennet, Wm. Wooley Leigh, Gawcott, Bucks.	Thomas Hearn, Buckingham.
Bokon, Peter Jones, 8, Prior Place, East St. Walworth ; and 27, Salsbury Place, Walworth.	Richard Jackson, Kingston-upon-Hull ; assigned to William Tredway Clarke, Great James Street, Bedford Row.
Beaufisse, Robert Gray, 52, Gloucester Street, Queen Square ; and Great Grimsby, Lincolnshire.	George Babb, Great Grimsby, Lincolnshire.
Bellhouse, Thomas Taylor, Wakefield, Yorkshire.	Thomas Taylor, Wakefield, Yorkshire.
Baker, Thomas, 3, Meck'enburgh Terrace ; and Manchester.	Samuel Dukenfield Darbshire, Manchester ; assigned to Thomas Rainsford Ensor, South Square, Gray's Inn.
Brown, Joseph Thomas, 30, Russell Square ; and 52, Tavistock Square.	Michael Clayton, Lincoln's Inn ; assigned to William Strickland Cookson, Lincoln's Inn.
Bailey, Elijah Crosier, 6, New Street, Brompton ; Norwich ; and King Street, Covent Garden.	James Winter, Norwich.
Bennett, John William, 1, Belgrave Street, King's Cross.	Charles Constable, Symond's Inn ; assigned to James Joseph Blake, Essex Street, Strand
Burry, John, the younger, 2, Field Court, Gray's Inn ; and Alfred Place, Store Street, Bedford Square.	George Humphreys, Manchester.
Best, William, 35, Arundel Street ; Cambridge Street, Edgware Road ; Bedford Street, Bedford Row ; Warwick Street, Regent Street ; and 81, Quadrant, Regent Street.	James Best, Winchester.
Burton, William Warwick, 12, Grove Road, St. John's Wood.	Septimus Burton, Serle Street.
Cooper, Charles, South Lambeth.	George Streeter Kempson, Abingdon Street, Westminster.
Copp, Alfred, 136, Grove Street, Camden Town ; New Boswell Court ; and Jeffery's Street, Camden Town.	Matthew Paramore, Bridgwater.
Childe, Harry Joseph, 5, Salsbury Street, Strand ; and Warwick.	Joseph Shipton, Warwick ; assigned to William Edward Buck, Warwick.
Cross, Seth, Barnsley, Yorkshire ; and Trinity Terrace, Borough.	Edward Newman, Barnsley, Yorkshire.
Carter, Alfred, 11, Great Ormond Street, Queen Square ; Pinley, Warwickshire ; and 15, Great James Street, Bedford Row.	John Carter, Coventry.
Croft, John, 1, Hamilton Terrace, St. John's Wood ; and 3, Compton Street, East.	Charles Richard Roberts, Seething Lane, Tower Street.

[To be continued.]

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## PRACTICE.—SOLICITOR AND CLIENT.—ORDER TO PAY COSTS.

*A solicitor having obtained an order for taxation of costs against his client, served the latter personally with the Master's certificate, and afterwards obtained after notice, an order on the client to pay the costs within three weeks or be committed. This order was not served on the client until after the three weeks had expired: Held, that this order being abandoned and spent, all subsequent orders founded on it, for enforcing the payment of the costs were irregular.*

Mr. Russell moved for the discharge of an order obtained by Mr. Chambers, on the 20th of January last, by which several orders made in May, June, and November, 1839, were discharged. Mr. Chambers had been a party in the cause of *Duffield v. Elwes*, in this Court, and Mr. Wilton, on whose behalf the present application was made, had been his attorney and solicitor in that and other matters, and having a demand for costs against Chambers, he obtained, after a contest, an order for the taxation of his bill in 1838. The master taxed the costs to 67l. 10s. 4d., and on the 12th of February 1839 Wilton served Chambers personally with the master's certificate and the previous order for taxation and payment, and on the 2d of May following, the costs not being paid, he obtained an order, in pursuance of notice, on Chambers to pay the taxed costs within three weeks from that day. On the 8th of June, after the three weeks had elapsed, the costs not having been paid, the order of the 2d of May was served on Chambers, and the costs were demanded but not paid. He was then (on the 8th day of June) served personally with the four day notice for the 12th of the same month, that the Court would be moved for his committal to the Fleet, unless he paid the costs in the mean time. That motion was made before the Master of the Rolls, who made an order on Chambers to pay the amount of the master's certificate of the costs, or stand committed; that order was personally served on Chambers on the 4th of November last, and on the 14th of November another order (which was discharged by the order obtained by Mr. Chambers) was made. It recited the former orders, and then stated that on hearing them (the former orders) read, it was ordered that Mr. Chambers be committed until he paid the said costs pursuant to the orders of the 12th of June 1839. Mr. Chambers, though personally served with notice of this as well as of all the former motions and orders, did not appear by himself or counsel. He was then already in the Fleet Prison, and receiving large sums of money under an order of this Court. In the mean time a vesting order was obtained under

the recent act of parliament, vesting all his property in assignees in the Insolvent Debtor's Court. However, on the 20th of January last, Mr. Chambers came, in pursuance of a notice he gave of a motion to discharge for irregularity, all the orders obtained by Mr. Wilton, for payment of his costs; the irregularity he complained of was, that the order of the 2d of May 1839, was not served on him until after the three weeks had expired. He conceived he had a right to lie by all the time, and then come forward to discharge for irregularity orders made on him on adverse notice. The learned counsel argued that the order of the 12th of June was perfectly regular, and went into a distinction between the practice in proceedings for payment of costs between party and party, and between solicitor and client. If Mr. Chambers had appeared to the motion of the 12th of June 1839, he could not have stopped the order then made, except by paying the costs; it was not, therefore, competent for the Court to discharge that order afterwards, and a party who did not appear on notice to oppose a motion against him, ought not to be heard to complain of irregularity. At all events, it was his duty to come to the Court to complain as soon as he knew of the irregularity, whereas he lay by until the 20th of January in the present year. He submitted that the order then made on the application of Chambers, discharging Mr. Wilton's orders, should be discharged with costs for irregularity.

The Lord Chancellor, stopping Mr. Wiggram, who was for Mr. Chambers, said, he could not agree in the proposition, that if one party takes an irregular order, then, because the other party affected by it does not come to the Court to oppose or discharge it, such order becomes regular. His opinion was, that all the orders obtained by Mr. Wilton subsequent to that of the 2d of May were irregular. The first order was on Mr. Chambers to pay the costs: on the 8th of February 1839, the master taxed the costs and gave his certificate, and then a demand was made for payment. Nothing was done from that day until the 2d of May 1839, when the order on Mr. Chambers to pay within three weeks or stand committed was made. Then, on the 8th of June following, after the three weeks expired, the order of the 2d May was served, and no payment of the costs being then made, the order of the 12th June 1839 was obtained at the Rolls on the ground that the order of the 2d of May was not complied with. No notice was given of that order to Mr. Chambers until the time of obeying it expired, and it was not competent for the other party who obtained that order, after acting on it, to abandon it, and rest on the subsequent orders. All the subsequent proceedings did in fact rest on that order of the 2d of May as appeared to his Lordship, and nothing being done on that order, it could not be made a ground for the order of the 12th of June. Again, the order of the 12th of June was not served till the 2d of November, and on the 14th of November an order for commitment was made. If the order of the 12th

of June could not stand, the order of the 14th November resting on it could not stand. Nothing was done between the parties from the 12th of June till the 2d of November; after all this negligence and irregularity, when Mr. Chambers appeared on the 23d of January for relief, the Master of the Rolls was quite justified in granting it, and this application must be refused with costs.

The costs to be deducted from the costs due by Mr. Chambers to Mr. Wilton.

*Ex parte Wilton, in Duffield v. Elwes, Sittings at Lincoln's Inn, March 4th 1840.*

### Queen's Bench Practice Court.

#### WARRANT OF ATTORNEY.—ATTESTATION.—ATTORNEY AND CLIENT.

*An attorney can not act for both plaintiff and defendant in preparing and attesting a warrant of attorney, and if he does, the instrument will be set aside pursuant to 1 & 2 Vict. c. 110, ss. 9 & 10.*

*B. Andrews and W. J. Alexander*, shewed cause against a rule obtained by *Crompton*, calling on the plaintiff, W. Hughes, and R. Rising, to shew cause why the warrant of attorney in this case should not be delivered up, and the judgment signed thereon set aside on the ground of no attorney having been present for, on behalf of, or named by, or attending at the request of the defendant, when the said warrant of attorney was signed; and that the same was not attested by an attorney for the defendant; and also on the ground of the said warrant being void, it having been obtained by usury and extortion, and why the costs of, and occasioned by, this application, to be taxed by one of the Masters, should not be paid by the plaintiff, or by the said Messrs. Hughes and Rising, to the defendant or his attorney; or why it should not be referred to one of the Masters to take an account of all monies due for principal, interest, and costs on the said warrant of attorney and judgment; and of all monies due from the defendant to the said Messrs. Hughes and Rising, or either of them, in respect of the monies mentioned in the affidavits; and why, on payment of what the master shall find due, satisfaction should not be entered on the said judgment; and why the plaintiff and the said Messrs. Hughes and Rising should not deliver up to the defendant, on oath, all securities, books, papers, writings, and documents in their or either of their possession, belonging to defendant, and re-convey or re-assign to the defendant all his estates and property mortgaged to the plaintiff, or to Hughes, or either of them. The rule was obtained on the affidavit of the defendant, and which stated that he was possessed of freehold and other estates in the county of Gloucester, of 3,000*l.* a-year, on which there was a mortgage for 40,000*l.*, and that in the present year, having occasion for 2,000*l.*, he was introduced to W. Hughes by one Featherstonehaugh, a chemist at Worcester, and that Hughes carried

on the business of an attorney with one Robert Rising. It was further sworn that Hughes and his partner stated that they could not procure the money unless they were granted full authority to pay off all defendant's mortgages, to which defendant assented, and gave Hughes his note of hand for 2,000*l.*, and also executed a deed of mortgage for 2,000*l.*, upon which Hughes paid a debt of the defendant's to Featherstonehaugh, and gave him a sum of about 900*l.*, as and for the remainder of the said intended loan of 2,000*l.*, after deducting interest and discount. In consequence of an appointment between Rising and the defendant, they met at an hotel in Covent Garden in the month of June, when Rising stated he had obtained 5000*l.* from his brother in Norfolk, but that the defendant must execute a warrant of attorney, which Rising produced completely ready for signature, as a collateral security for the 5,000*l.*, on a mortgage deed of defendant's estates, by Wm. Rising, the brother of Robert Rising. The defendant in his affidavit denied having seen the warrant of attorney previous to executing it, or that it was perused by any one on his behalf, and that Robert Rising only paid him the sum of 4,000*l.*, in full satisfaction of the loan of 5,000*l.*, expressed to be secured on a mortgage, retaining 1,000*l.* as a commission thereon, and that according to his belief, Robert Rising acted as the attorney of his brother, and that no other attorney acted in the transaction.

*B. Andrews and Alexander* shewed cause for Wm. Rising, contending that from the defendant's affidavit it appeared that Hughes and Rising were the defendant's attorneys, and that there was no usury, according to his own statement. William Rising in this instance was an innocent party, who advanced his money on the faith of this instrument. In *Dagnall v. Wigley*,<sup>a</sup> in which a broker agreed with the defendants to get their bills discounted, and that he should retain the exorbitant brokerage of 10*s.* per cent, but he was not to advance the money, nor was his name on the bills, it was held, that a bill accepted by defendants, and negotiated by the broker on these terms, could not be avoided within the statute of 12 Anne, c. 16, as for a usurious consideration. The case of *Jones v. Davison*<sup>b</sup> was also in point. In *Rice v. Linsted*,<sup>c</sup> it was held that the defendant should exercise a free and unrestrained choice in sending for some person who shall act as his attorney; and that choice had been exercised here. *Hutson v. Hutson*,<sup>d</sup> *Todd v. Gompertz*,<sup>e</sup> and *Walker v. Gardiner*,<sup>f</sup> between which cases and the present, no analogy existed. *Mason v. Kiddle*,<sup>g</sup> was distinguishable from this case. There the defendant did not go to the attorney as his own attorney, but as the agent of the other side. In respect to the latter part of the rule, the proper remedy was a bill in Chancery.

<sup>a</sup> 11 Ea. 43; 2 Camp. 33.

<sup>b</sup> Holt's N. P. C. 256. <sup>c</sup> 7 D. P. C. 155.

<sup>d</sup> 7 T. R. 7. <sup>e</sup> 6 D. P. C. 296.

<sup>f</sup> 4 B. & Ad. 371. <sup>g</sup> 5 M. & W. 513.

Sir W. Follett and R. V. Richards contended on behalf of Hughes and Rising, the attorneys, that all which the act required was, that there should be an attorney present for the defendant, named by him, and attending at his request.

*Cresswell* and *Crompton* in support of the rule.—There is no affidavit from Wm. Rising of his having advanced the money, and he does not deny that Robert Rising was his attorney. *Walker v. Gardiner* and *Mason v. Kiddle* were analogous cases.

*Cur. adv. vult.*

*Patteson*, J.—This was a motion, amongst other things, to set aside a warrant of attorney and judgment, upon the ground that the requisites of 1 & 2 Vict. c. 110, ss. 9 & 10, had not been complied with. Taking the facts in the most favourable light for the plaintiff, they appear to be as follows: The warrant of attorney was one of several securities given upon a loan of 5,000*l.* by the plaintiff; it was attested in the proper form by the plaintiff's brother, an attorney at Worcester, who, together with his partner, had for some months had the management of the defendant's affairs; the witness was the attorney of the defendant generally, and particularly in this transaction; and on his informing the defendant that it was necessary he should have some other attorney present, named by him, to explain the meaning of the instrument, the defendant refused, saying, "you are my attorney, and I will have you only." But it also appeared that the attorney had prepared the warrant of attorney and other securities for the protection of his brother the plaintiff, and was beyond all doubt acting for the plaintiff in the matter as well as for the defendant; and the question is, whether his so acting prevented him from being a good witness under the statute in question. The recent case of *Mason v. Kiddle*, following up former decisions, has established the doctrine that the attorney attending for the defendant must be a person other than the attorney acting for the plaintiff. It is true that in that case, the witness acted first as attorney for the plaintiff, and afterwards for the defendant. Here, the witness was attorney for the defendant in the first instance, and superadded the character of attorney for the plaintiff in this particular transaction. I think that the difference is quite immaterial. I do not say that it was necessary that any attorney for the plaintiff should have been present. If the document had been prepared by some one else and sent to the defendant's attorney to procure his client's signature, he not charging the plaintiff, or acting for him in any other manner, it might have been good. But I am satisfied, upon the affidavits in this case, that the witness acted as attorney for both, and that, I am of opinion, is contrary to law. Great inconvenience was supposed to be likely to result from the Court thus holding; for it was said to be very common in the country that an attorney had clients wishing to lend, and clients wishing to borrow; that warrants of attorney are common securities on loans, and that if

two attorneys must always be concerned, it would be necessary to expose the client's affairs to a stranger. Such an exposure will be necessary to the extent of obliging the borrower to send for some other attorney to explain and attest the warrant of attorney, if the lender chooses to have such a security, but no further; and without his doing so, there is great danger that he will not, in many cases, have the protection intended by the statute. On the defendant's refusal to have another attorney in this case, Mr. Rising ought to have told him that the warrant of attorney would not be binding unless he did, and that the money could not otherwise be advanced. For these reasons I am of opinion that this rule must be made absolute, so far as regards the setting aside the warrant of attorney and judgment. This decision proceeds upon the supposition that the plaintiff really advanced the money, upon which fact some doubt was thrown, principally on account of the plaintiff not making any affidavit. This is material with reference to other parts of the rule. The conduct of the attorney, as disclosed by the affidavits on both sides, appears to me very reprehensible; for it is sworn and not denied, that there was a bargain between him and the defendant, that he should receive, and did receive, a most exorbitant sum for his commission and trouble in this loan of 5,000*l.*, and in a prior loan of 2,000*l.*, by the attorneys themselves; but the plaintiff, the lender, is not implicated in those matters, and I have no power to deal with the mortgage deeds or any securities except the warrant of attorney, nor to order any account to be taken by the master between the plaintiff and defendant, or that the attorneys should deliver up the securities which they hold for the plaintiff; nor can I, upon this rule, order any such inquiry as between the defendant and the attorneys considered as his attorneys. The rest of the rule therefore, must be discharged, and, according to the general practice, this would be with costs, because the rule has asked too much; but as in this case, the plaintiff has made no affidavit and the circumstances are very suspicious as to his having really advanced any money at all, and, as the rule succeeds in that part, I am of opinion that no costs on either side should be allowed.

Rule accordingly.—*Rising v. Dolphin*, H. T. 1840. Q. B. P. C.

COURT OF 'QUEEN'S BENCH,  
11th April, 1840.

ORDER OF BUSINESS.

The Court will, during the first four days of the next term, take Motions, and the Peremptory Paper; and should the whole of the Motions for New Trials Nisi not be heard within the four days, when they are all disposed of will proceed with the Special and Crown Papers on the usual days, and every open day the New Trial Paper.

## CAUSE LIST, EASTER TERM, 1840.

## Lord Chancellor.—Vice Chancellor.

## Judgments.

Attorney Gen. v. Pearson, *appeal*  
 Attorney Gen. v. Wilson, *ditto*  
 Ward v. Painter, *appeal*  
 Hawksworth v. Brammell, *ditto*  
 Nasum v. Appleford, *ditto*  
 Swain v. Pratt, *exons. & fur. dirs.*  
 Maund v. Allies } causes  
 Ditto v. Cooke } causes  
 Attorney Gen. v. Earl of Stamford, *cause*  
 Musgrave v. Newton, *cause*  
 Att. Gen. v. Boston, 2 *appeals*  
 Wormald v. Mackintosh, *appeal*  
 Mortimer v. Fraser, *ditto*  
 Brent v. Brent, *cause*  
 Davies v. Cooper, *ditto*  
 Ibbottson v. Ibbottson, *cause V. C.*  
 Archer v. Slater, *ditto V. C.*  
 Att. Gen. v. Nethercoat, *ditto V.C.*  
 Dooper v. Emery, *exons. V. C.*

## Pleads and Demurrers.

S. O. Foley v. Hill, *plea*  
 Turner v. Hill, *demurrer*  
 Ditto v. Tyacke, *ditto*  
 Ditto v. Borlase, *ditto*  
 Ditto v. Harvey, *ditto*  
 Ditto v. Cairne, *ditto*  
 Cotman v. Orton, *ditto*  
 Soley v. Coates, 2 *demurrs*  
 Bignold v. Audland, *demurrer*  
 Nicholson v. Peile, *ditto*  
 Forman v. Nevill, *ditto*

## Re-hearings and Appeals.

Abated { Sherwood v. Storer, *appeal*  
 Tucker v. Stone, *ditto*  
 Blanchard v. Cawthorne, *do.*  
 Ashton v. Milne, *ditto*  
 Gambia v. Gambier, *appeal*  
 S. O. Barratt v. Howard, *ditto*  
 S. O. Attorney General v. Brentwood, *appeal*  
 S. O. Dixon v. Dixon, *appeal*  
 S. O. Dearman v. Wyche, *ditto*  
 Pym v. Lockyer, *ditto*  
 Ditto v. Ditto  
 Ditto v. Brunskill, *suppl. ditto*.  
 Agabeg v. Hartwell } *re-hearg.*  
 Colvin v. Ditto  
 Pitcher v. Faithful, *appeal*  
 Williams v. Owen, *ditto*  
 Casson v. Greenroyd, *ditto*  
 Walker v. Edwards, *ditto*  
 Clapton v. Bulmer, *ditto*  
 Att. Gen. v. Fishmonger's Company } *ditto*  
 Kneseworth's Charity } *ditto*  
 Att. Gen. v. Do. (Preston's ) Charity } *ditto*

Easter Term, 1840.

Wednesday, 15th April—Motions  
Thursday, 16th April

## Causes, further Directions, and Exceptions.

Newham v. Timbrell }  
 Villiers v. Flint }  
 Pelham v. Towne }  
 Knott v. Chamberlain }  
 Price v. Smith }  
 Scaife v. Scaife }  
 Orred v. Shuttleworth }  
 Leonard v. Chambers }  
 Garrett v. Cockerell }  
 Dovehill v. Barnet }  
 Codrington v. Lyne }  
 Delfosse v. Butler }  
 Bailiff, &c. of East Retford v. Cottam }  
 Penruddock v. Watts }  
 Morrison v. Roberts }  
 Dixon v. Robinson }  
 Brown v. Gaubert }  
 Stone v. Stewart }  
 Woodman v. Bostock }  
 Bolton v. Barnes }  
 Baring v. Theobald }  
 Kynaston v. Capper }  
 Edwards v. Rutherford }  
 Roberts v. Lee }  
 Pimer v. Mifflen }  
 Clarke v. Clarke }  
 Adams v. Brine }  
 Best v. Bayley }  
 Ponget v. Chambers }  
 Janaway v. Williams }  
 Ballard v. Triggs }  
 Morris v. Wilson, *fur. dirs. and costs* }  
 Hamilton v. Williams }  
 Yarnold v. Yarnold, *exons., fur. dirs. & costs* }  
 Underwood v. Cole }  
 Bosanquet v. Burnand, *further directions* }  
 Weeks v. Baron }  
 S. O. Hancock v. Teague, *exons.*
 S. O. Nochells v. Lingham, *do.*
 S. O. Barratt v. Howard, *exons.*
 Lacon v. Waterton }  
 Abated { Clobery v. Herring }  
 Folland v. Lamotte }  
 S. O. Harvey v. Leaf }  
 S. O. Arnold v. Hardwicke }  
 Abated Hinckman v. Sadler }  
 S. O. Griffith v. Richards }  
 S. O. Reece v. Taylor, *exceptions, two sets* }  
 S. O. Bryant v. Beale, 3 *causes* }  
 Abated Flight v. Lake, *exceptions*
 S. O. { Wilson v. Bedward }  
 S. O. { Ditto v. William }  
 Abated Cochrane v. Curlewis }  
 S. O. Weatherall v. Brown, *further directions & costs* }  
 S. O. Fermor v. Breeds }  
 Abated Stiff v. Simmonds }  
 S. O. Trought v. Trought }

Abated Griffith v. Browne }  
 S. O. Edwards v. Lloyd }  
 Abated Sewell v. Murray }  
 Abated Manistre v. Vines }  
 S. O. Hussey v. Bickerton }  
 Abated Richards v. Commins }  
 S. O. Heaton v. Blair, *exons.*
 Abated Phillips v. Edwards }  
 S. O. Clough v. Bond }  
 Abated Att. Gen. v. Laslett }  
 " Powell v. Bettiss }  
 " Woodforde v. Woodforde, *two causes* }  
 " Bowers v. Sherman, *further directions and costs* }  
 " Rowlings v. Solomons }  
 " Hill v. Stephenson }  
 " Gordon v. Robley }  
 " Fox v. Beedham }  
 " Gooch v. Wilson }  
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" Houghton v. Houghton	" Hulme v. Hulme, ditto	Attorney General v. Mathie, exceptions & ditto
" Hodgkinson v. Walley	" Holmes v. Upton	Jones v. Jones, fur. dirs. & costs
" Logan v. Smith	" Field v. Churchill	Waters v. Stephens, ditto
" Sidney v. Ranger, exons.	" Logan v. Baines	Bainbridge v. Blair, further directions and costs
" Turner v. Trelawney	" Crutchley v. Gardner	Burrows v. Venables, ditto
Abated L.C. Campbell v. Fleming	" Rogers v. Frank	Tritchley v. Williamson, ditto
L.C. Wildes v. Davies	V.C. De Deauvoir v. Rhodes	Freeman v. Biers, fur. dirs. & cs.
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" Barnwell, pauper v. Cooke, defendant's request	" Coulton v. Middleton	Sinkler v. Crotch, ditto
" Brown v. Davenport, exons., fur. dirs. & costs	" Joyce v. John	Fletcher v. Northcote, exceptions
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" Attorney General v. Stone	Child v. Knight	Hughes v. Rogers, fur. dirs. & cs.
S.O. L.C. { Pearse v. Brooke	Curteis v. Kenrick, fur. dirs. & cs.	{ Ward v. Swift } ditto
{ Ditto v. Bryan	Tatam v. Williams	Ditto v. Lucas }
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" Lozon v. Pryse	Baxter v. Atkinson	Mayor of Tenby v. Att. General
" Ashbee v. Ashbee, further directions and costs	Brandon v. Budgen	Jones v. Lowe, fur. dirs.
" Williams v. Corbet, exceptions, three sets	Inge v. Inge	Cotman v. Orton
" Walton v. Morritt	Buckeridge v. Glasse	Thomas v. Jones
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L.C. Pritchard v. Pritchard	Robinson v. Myers	Johnson v. Reynolds
" Miller v. Little, exceptions	Allday v. Fletcher	Blundell v. Gladstone
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" West v. Funge	{ Wastell v. Leslie }	Buckle v. Harris
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" Hull v. Radcliffe	Rabbets v. Reeves	Webb v. Whitehead
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" Ackers v. Shakspear	Boddington v. Woodley	Attorney General v. Corporation of Bridgewater
" Tapscott v. Newcombe	Jackson v. Woolley, further directions and costs	{ Attorney General v. West }
" Matthews v. Wyburn	Ingle v. Neale, fur. dirs. & costs	{ Ditto v. Palmer }
" Caldecott v. Caldecott	Blathwayte v. Taylor	Hill v. Smith
" Westover v. Poster	Johnson v. Child	Jumpson v. Pitchers
" Groom v. Chambers	Eyles v. Caulcutt	Fry v. Fry
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" Webber v. Bolitho, at request of defendant	Butcher v. Jackson	Pulsford v. Becham
" Wait v. Horton	Crosse v. Bedingford	Taylor v. Earl of Harewood
" Marshall v. Marsh	Attorney General v. Glynn	Gibbs v. Gregory
" Isaac v. Russell	Nicholson v. Horsey	Newman v. Howard
" Boys v. Trapp	Fullwood v. Dowding	Coppin v. Gray
" Loveland v. Maxey	Pelbain v. Turner, at rey. desl.	Jeve v. Maish
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" Ball v. Barber, exceptions	Runciman v. Stillwell	Malpas v. Cawley
" Bullivant v. Taylor, ditto	Bannatyne v. Leader	Beaman v. Hewson
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*Pleads and Demurrers.*

Wood v. Sheppard, plea

Trinity Term—Society for the Illustration and Encouragement of Practical Science v. Abbott, demurrer  
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*Easter Term, 1840.*  
*Abated Causes.*

Bolton v. Powell  
 Filder v. Bellingham  
 Tyler v. Stace—(April 16, 1839)\*  
 Davies v. Davies—(May 17, 1839)  
 Gordon v. Hendrie, exceptions  
 Knight v. Frampton—(May 23, 1839)  
 Bailey v. Earle—(May 23, 1839)  
 Stephens v. Stephens—(Nov. 6, 1839)  
 Paris v. Hughes—Ditto v. Tebbutt, exceptions  
 Attorney-General v. Foord—(Dec. 23, 1839)

*Adjourned Causes.*

Partington v. Baillie—s. o. 1st day after Trin. Term  
 Attorney-General v. South Sea Comp.—s. o. aft. Term  
 Gibbs v. Bowes—s. o. to come on with Supplemental Bill  
 Steer v. Wise—s. o. 1st Cause day of Trin. Term

\* The dates within parenthesis indicate the days when Subpœna notes returnable.

- Attorney-General v. Master of Dulwich College—(April 20, 1838)—*s. o.* Day to be fixed by Attorney-General
- Western v. Williams—*further directions & costs*—*s. o.* Michaelmas Term
- Lane v. Hardwicke—(April 30)—*s. o.* Michaelmas Term, with liberty to apply to advance
- Warsop v. Scrimshaw—(May 31) *s. o.* Generally
- Attorney-General v. Bayley—*s. o.* 1st Cause day after Term
- Wilson v. Mead—(November 7)—*s. o.* Generally
- Wormald v. Mackintosh, 2 causes—*fur. dir. and costs*—*s. o.* Generally
- Raikes v. Roulton—*fur. dir. and costs*—*s. o.* Generally, with liberty to apply
- Walker v. Earl of Abingdon—*fur. dirs. and costs*—*s. o.* Generally
- Attorney-General v. Lister—(April 16, 1839)\* *s. o.* T. Term.
- Suckermore v. Dimes—(April 19)—*s. o.* T. Term
- Artis v. Artis—*s. o.* Trin. Term
- Brandon v. Woodthorpe—(May 28)—*s. o.* T. Tm.
- Barton v. Chambers—*s. o.* Mich. Term
- Ellis v. Griffiths—Ditto v. Carns—(May 29)—*s. o.* Mich. Tm, with liberty to apply to advance
- Wild v. Hardy—(June 28)—*s. o.* Michs. Term
- Buckmaster v. Rothrey—(June 29)—*s. o.* 1st cause day after Term
- Noble v. Noble, *fur. air. & costs*—Set down Aug. 5, 1839—*s. o.* Generally
- Shepherd v. Morris—*s. o.* T. Term
- Hobbs v. Hobbs—(November 7)—*s. o.* Generally
- Crallan v. Oulton
- Attorney General v. Jones
- Baker v. Harwood
- Attorney Gen. v. Whiteman—Ditto v. Maxfield—(May 31, 1838)
- Ross v. Hafford—(Jan. 17, 1839)
- Sidmouth v. Sidmouth—Ditto v. Lord Edon
- Johnston v. Todd, 3 causes—*exons. fur. dirs. and costs and petition*
- Cantrell v. Sutton
- Gater v. Clive—Ditto v. Fenton, (18th April 1839)
- Howard v. Harrison—Ditto v. Prince
- Bater v. Webber, *fur. dir. and costs*
- Fyler v. Fyler, (May 29)
- Wilkins v. Stephens, 4 causes—Ditto v. Cornwall, 2 causes—Ditto v. Hawkins, exceptions—Set down June 12, 1839
- Carter v. Bentall—Ditto v. Mendham, *fur. dir. and costs*—Set down June 12
- Gilbertson v. Webster, 2 causes, *fur. dir. & costs*—Set down June 20
- Benbow v. Curling—Ditto v. Francis, (July 13)
- Attorney Gen. v. Mayor of Leicester, (July 16)
- Attorney Gen. v. Cooper's Company, (July 9)
- Attorney Gen. v. Miller, (July 16)
- Robinson v. Addison—Ditto v. Robinson (July 12)
- Lichfield v. Baker, *fur. dir. and costs*—Set down June 26
- Montgomery v. Calland—Ditto v. Patrick—Edwards v. Ditto, *exceptions and petition*—Set down July 4
- Woodcock v. Renneck—Set down July 13
- Beasant v. Clare—Set down July 19
- Hardwicke v. Richardson, 2 causes—Ditto v. Jones—*fur. dirs. and costs*—Set down Aug. 5, 1839
- Salmon v. Jones—Ditto v. Salmon—*fur. dirs. and costs*—Set down August 6
- Montresor v. Montresor—*fur. dirs. and costs*—Set down August 7
- Hotham v. Somerville, 2 causes—*fur. dirs. & costs*—Set down August 8
- Robertson v. Crawford—*exons. & fur. dirs. & costs*—Set down August 9
- Stevens v. Webb—Ditto v. Ditto—Harris v. Nash—*fur. dirs. and costs*—Set down August 16
- Davis v. Davies—*fur. dirs. and costs*—Set down August 23
- Goodenough v. Tremamondo—*fur. dirs. and costs*—Set down August 24
- Young v. Powys—(November 4)
- James v. James
- Reeve v. Cann—(November 5)
- Corbett v. Corbett
- Park v. Upton—at request of defendant Smith
- Barnard v. Pomfret
- Cleas v. Humphries
- Prentice v. Fairbrass
- Cheveley v. Cheveley—(November 7)
- Crosswell v. Lord Kensington
- First day of Term—Attorney General v. Towle—Ditto v. Hanson
- Roberts v. Graves—(November 18)
- Price v. Waterhouse—Ditto v. Silver—*fur. dirs. & costs*—Set down November 6
- Haward v. Lacy—*fur. dir. & costs*—Set down Nov. 11
- King v. Wheeler—Gale v. Tanner—*fur. dirs. and costs*—Set down Nov. 12
- Atkins v. Atkins—(December 23)
- Mason v. Bogg—*fur. dirs. and costs*—Set down November 18
- Gray v. Foat—(December 5)
- Attorney Gen. v. Kell—(December 18)
- Day v. Holbrook—*fur. dirs. and costs*—Set down November 25
- Attorney General v. Plater
- Attorney General v. Dudley
- Attorney Gen. v. Jesus Hospital—(December 23)
- Attorney General v. Mayor of Colchester
- Attorney Gen. v. Draper's Co. Harwar's Charity
- Mandale v. Dodgson—*fur. dirs. & costs*—Set down December 6
- Wiggins v. Peppin—Ditto v. Clarke—Ditto v. Peppin—(December 23)
- Walond v. Walond—*exons. fur. dirs. and costs*—Set down December 9
- Rycroft v. Christy—*exons. fur. dirs. and costs*—Set down December 19
- Gregory v. West—Ditto v. Warton—*fur. dirs. and costs*—Set down December 23
- Glynn v. Sawle—*exons. and fur dirs. and costs*—Set down December 23
- Attorney General v. Draper's Co.—(Jan. 13, 1840)
- Stocker v. Belcher—(January 13)
- Graham v. Oliver—(January 13)
- Ambler v. Tebbutt—(January 13)
- Hodges v. Croyden Canal Co.—(January 13)
- Page v. Way—(April 15)
- Cocker v. Evans—(January 14)
- Tamlyn v. Loosmore—request Defendant—(Jan. 14)
- Farrow v. Reece—(January 14)
- Witley v. Mangles—(January 14)
- Gillet v. Peppercorne—(January 15)
- Fortnum v. Macdonald—request Defendant
- Greenlan v. King
- Wigley v. Whittaker
- Hartshorn v. Eastern Counties' Railway Co.—(January 16)
- Cherrington v. Moore—at request of Defendant
- Rider v. Edwards
- Gibbs v. Scott
- Hodgson v. Crook
- Ladley v. Clerk—Ladley v. Williamson—(Jan. 17)
- Griffiths v. Griffiths—(January 20)
- Attorney General v. Phillips—(January 21)
- Attorney General v. Bullen—(January 21)
- Attorney General v. Brettingham—(January 21)
- Attorney General v. Wood—(January 28)

Billings v. Blount—*fur. dirs. and costs*—Set down January 15, 1840  
 Davies v. Fisher—Ditto v. West, *exceptions*—Set down January 16, 1840  
 Alder v. Davall—(February 4, 1840)  
 Price v. Price—*fur. dirs. & costs*—Set down Jan. 20  
 Frobisher v. Hollington—*exceptions*.  
 Barber v. Hollington—*excons.*—Set down Jan. 23  
 Dawson v. Day—Laws v. Day—(February 15)  
 Robinson v. Wood, 2 causes—*fur. dirs. and costs*—Set down January 29  
 Williams v. Richards—(February 20)  
 Attorney General v. Wimburn Minster Grammar School—(February 28)  
 Garlick v. Jackson—(February 29)  
 Attorney Gen. v. Cotterell—Set down Feb. 20  
 Attorney Gen. v. Chapman—Set down Feb. 20  
 Attorney Gen. v. Mantel—Set down Feb. 20  
 Attorney Gen. v. Cook—Set down Feb. 20  
 Attorney Gen. v. Draper's Company, Russell's Charity—Set down February 20  
 Wilson v. Cluer—*fur. dirs. and costs*—Set down February 22  
 Clark v. Wenn—*fur. dirs. & costs*—Set down Feb. 24  
 Finch v. Brown, 4 causes—Brown v. Finch, 2 causes—*further directions and costs*—Set down Feb. 26  
 Marks v. Baylis—*fur. dir. & costs*, Set down Feb. 26  
 Trigg v. Penley—(April 15)  
 First day of Term—Pritchard v. Foulks—Ditto v. Gladstone—Ditto v. Williams—Set dn. March 7  
 Falkner v. Matthews—*excons. fur. dirs. & costs*—Set down March 7  
 Short—Mattison v. Tanfield—*fur. dirs. & costs*—Set down March 9  
 Sutton v. Doggett—*fur. dirs. & costs*—Set down March 9  
 Tylee v. Tylee, 2 causes—*fur. dirs. and costs*—Set down March 11  
 Cotham v. West—*exceptions*—Set down March 11  
 Radburn v. Jervis—Ditto v. Brundrett—*excons. fur. dirs. and costs*—Set down March 16, 1840  
 Hellyer v. Linden—*exceptions*  
 Archbold v. Blake—Stig v. Greg—*exceptions*  
 Ford v. Fowler—(March 15)  
 Knight v. Gosling—(March 21)  
 Bastin v. Waits—Set down March 23  
 Williams v. Nixon—Ditto v. Cannan—Ditto v. Nixon—*fur. dirs. & costs*—Set down March 24  
 Adams v. Bush—*fur. dirs. and costs*—Set down March 30  
 Wilson v. Bateman—*fur. dirs. and costs*—Set down April 1  
 Nicholson v. Wathen—*fur. dirs. & costs*—Set down April 2

*New Causes.*

Harnian v. Clarke  
 Smith v. Webster

## Exchequer Equity.

*For Judgment.*

Haworth v. Bostock } original cause  
 Same v. Huine } supplemental suit  
 Publication passed.  
 Attorney General v. Liptrap }  
 Same v. Simpson } stand over  
 Same v. Isherwood }  
 Barrow v. Henderson }  
 Everdell v. Down } abated  
 Cutts v. Massy }  
 Greenwich Hospital v. Abbott, s. o. generally  
 Bridge v. Teed, stands over  
 Farquharson v. Theobald, stands generally

Garrard v. Hale  
 Crallan v. Worthington  
 Ditto v. Lees  
 Ditto v. Barlow  
 Jackson v. Richardson  
 Bunny v. Bunny

Wednesday the 22nd April  
*Cause.*

Green v. Wood  
 Ottley v. Gilly  
 Payne v. Freeman  
 Attorney General v. Mould  
 Ditto v. Parker

Tuesday the 23rd April  
 Neale v. Samples, at Defendant's request  
 Rice v. Bates  
 Attorney General v. Hall  
 Boultong v. Sewell

Friday the 24th  
 Culley v. Culley  
 Paull v. Paull  
 Ablett v. Edwards  
 Reed v. Treacher  
 Flower v. Hortopp  
 Ring v. Payne

Saturday the 25th  
 Shallicross v. Wright  
 Chichester v. Hunter  
 Evans v. Whitmore  
 Townley v. Deare  
 Millar v. Craig  
 Willson v. Leonard

Monday the 27th  
 Syng v. Giles  
 Prodron v. Hinton

Thursday the 30th

*The Registrar's Day.*

Price v. Price  
 Rayner v. Green } Second Cause in Trinity  
 Ditto v. Spencer } Term  
 Barton v. Bucknell  
 Moore v. Staniland  
 Friday, May 1st

*The Master of the Rolls' Day.*

Attorney General v. Morses  
 Ditto v. Mortimer  
 Attorney General v. Cotton  
 Attorney General v. Whitehead  
 England v. Downs  
 Langhorne v. Waine  
 Owen v. Owen  
 Patty v. Lansdale

Gibson v. Butler, abated  
 Totterdell v. White } ditto  
 Same v. Davis }

Clugstone v. Simpson, stand over generally  
 Doyley v. Prew, s. o. for further supplemental bill  
 Alsop v. Blair, ditto  
 Lord Foley v. Burnand, abated  
 Halford v. Halford, rehearing  
 Not to be in the paper for rehearing till order.  
 Payn v. Davis, stands over with liberty to amend  
 Compton v. Payn, ditto  
 Jones v. Tabor, at defendant's request—To be heard before Baron Alderson, with exceptions.

Cooper v. Hewson, stands over  
 Wood v. Wood, do. to amend  
 Knight v. Marquis of Waterford, part heard.—  
     Stands over till sittings after term.  
 Campbell v. Dickens    } original and supplemental  
 Same v. Appleford    } suits.  
     Stands over with liberty to amend.

*Publication not passed.*

Blanchard v. Pedder  
 Taylor v. Howard  
 Templer v. Miller  
 Janaway v. Middleton  
 Turner v. Lloyd  
 Daniel v. Bishop  
 Ferrand v. Stott  
 Whittaker v. Whittaker  
 Bellamy v. Vincent  
 Turnbull v. Walton  
 Hatch v. Ball, abated  
 Parker v. Alcock, ditto  
 Rowlandson v. Beck  
 Spencer v. Spencer  
 Macdonald v. Dance  
 Att. Gen. v. Lord Newborough  
 Dawson v. Lord Keith  
 Benson v. Smith

Minerbi v. Brown  
 Roe v. Peachey  
 Peachy v. Roe  
 Barnard v. Porch  
 Same v. Cock  
 Curlew v. Linley  
 Foley v. Carlton  
 Nutt v. Grizle  
 Williams v. Davis  
 Thomas v. Saunders  
 Fysh v. Cockle  
 Bainbrigge v. Blair  
 Walsh v. Ball  
 Jones v. Morgan  
 Jobson v. Deering  
 Small v. Attwood  
 Lewis v. Adams  
 Bishop v. Peddle  
 Hall v. Gregory  
 Watson v. Churchill  
 Lucy v. Boulter

Chambers v. Bircham } original and supplemental  
 Same v. Same       } suits  
 Smyth v. Chambers, stands over to amend  
 Ackland v. Braddick—rehearing first day Chief  
     Baron bears causes.  
 Waddilove v. Bush, stands over  
 Cater v. Masterman, part heard

Wetherell v. Bellwood    } Original  
 Dresser v. Same       } and re-  
                            } vived  
                            } cause.  
 Wetherell v. Weighill    } Do.  
 Dresser v. Same       } Do.  
 Same v. Wigglesworth    } Do.  
 Cory v. Wilkins—Original and  
     supplemental cause  
 Harrison v. Preston  
 Stott v. Stott  
 Cosier v. Rosser  
 March v. March  
 Mayor of London v. Combe  
 Tull v. Owen  
 Costeher v. Horrox, abated  
 Burrows v. Greenwood  
 Brayley v. Bywater  
 Toplis v. Ponder Heyde  
 Ringer v. Blake  
 Connell v. Hall  
 Craik v. Lamb

### Queen's Bench.

#### CROWN PAPER.

Easter Term, 1840.

Carnarvon—The Queen v. Stephen Jones  
 Surrey—The Queen v. Richard Sterry and another  
 Durham—The Queen v. Walter Featherstonhaugh  
 Exeter—The Queen v. Edw. Mc Gowan, as Mayor  
     The Queen v. Same, as Alderman  
 Staffordshire—The Queen v. Charles Dudley  
 Devon—The Queen v. Inhabitants of Exminster  
 Durham—The Queen v. John Marquis  
 Lancashire—The Queen v. Churchwardens of Man-  
     chester  
 Durham—The Queen v. Inhabitants of Middleton  
     in Teesdale  
 Bridgwater—The Queen v. Matthew Paramore  
 Yorkshire—The Queen v. Inhabitants of Raven-  
     stondale  
 Nottinghamshire—The Queen v. George Kelk  
 London—The Queen v. Thomas Wilson  
     Same v. Same  
 Yorkshire—The Queen v. Inhabitants of Darton  
 Surrey—The Queen v. John Hunt  
 Cambridgeshire—The Queen v. Rich. Eaton & an.  
 England—The Queen v. Eastern Counties Railway  
     Company  
 Durham—The Queen v. James Colbeck and others  
 Cheshire—The Queen v. William Axon  
 Lancashire—The Queen v. Richard Gould  
     The Queen v. Thomas Hardcastle  
 Merionethshire—The Queen v. Richard Thomas  
 Cambridgeshire—The Queen v. The Mayor, &c. of  
     Cambridge  
 Warwickshire—The Queen v. The Inhabitants of  
     Fenny Compton  
 Ipswich—The Queen v. The Inhabitants of St.  
     Clement  
 Dorsetshire—The Queen v. The Trustees of Harn-  
     ham Roads  
 Yorkshire—The Queen v. The Inhabitants of Mel-  
     sonby  
 Middlesex—The Queen v. James Bolton

Berkshire—The Queen v. Trustees of Hurley Roads  
 Norfolk—The Queen v. Inhabitants of East Winch  
 Surrey—The Queen v. The Steward of Richmond  
     Manor

Northumberland—The Queen v. The Inhabitants  
     of Newburn

Durham—The Queen v. Anthony Todd and others  
 Lancashire—The Queen v. The Inhabitants of  
     Preston

Nottinghamshire—The Queen v. William Robinson  
 Middlesex—The Queen v. The Inhabitants of Ken-  
     sington

Cheshire—The Queen v. The Inhabitants of Huds-  
     field

Derby—The Queen v. The Inhabitants of the  
     County of Derby

### EXCHEQUER SITTINGS IN EQUITY. *In Easter Term, 1840.*

Lord Abinger.

Wednesday Apr. 15 Petitions and Motions.

Thursday .. 16 Causes.

Tuesday .. 28 Petitions and Motions.

Mr. Baron Alderson.

Short Petitions, Motions,  
     and any business which  
     will not occupy much  
     time.

Lord Abinger.

1 } Pleas, Demurrers, Excep-  
   } tions, and Further Di-  
   } rections.

Saturday .. 2 Causes.

Tuesday .. 5 Petitions and Motions.

9 } Pleas, Demurrers, Excep-  
   } tions, and Further Di-  
   } rections.

Monday .. 11 Petitions and Motions.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

## Royal Assent.

14th April, 1840.

Publication of Parliamentary Papers.  
Newton Abbott Small Debt Court.

## House of Lords.

Copyholds Enfranchisement. Ld. Brougham.  
[In Select Committee.]For facilitating the Administration of Justice.  
[For second reading.] Lord Chancellor.For the commutation of Manorial Rights.  
[For second reading.] Lord Redesdale.Barkston Ash Small Debts Court.  
[Passed.]

Vagrants' Removal.

[For third reading.]

To amend the Tithes Commutation Act.  
[In Committee.]Frivolous Suits Act amendment, touching costs.  
[In Committee.] Lord Denman.

Rated Inhabitants Evidence.

[For third reading.]

To augment the Maintenance of the poor  
Clergy. [For second reading.]*Bills passed.*For defining the powers of the Metropolitan  
Police Justices. Marquis of Normanby.

For giving Summary Protection to the publication of Parliamentary Papers.

Newton Abbott Small Debts Court.

## House of Commons.

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

To improve the High Court of Admiralty.  
[For second reading.]To extend the Term of Copyright in Designs  
of woven Fabrics. Mr. E. Tennant.  
[In Committee.]To carry into effect the Recommendation of  
the Ecclesiastical Commissioners.  
[In Committee.] Lord J. Russell.To extend Freemen and Burgesses' Right of  
Election. Mr. F. Kelly.Drainage of Lands. Mr. Handley.  
[In Committee.]To amend the County Constabulary Act.  
Mr. F. Maule.To amend the Laws of Turnpike Trusts, and  
to allow Unions. Mr. Mackinnon.Prisons Act Amendment.  
[For third reading.]To consolidate and amend the Law of Sewers.  
[In Committee.]Small Debts Court for  
Aston, Tavistock,  
Liverpool, Wakefield Manor.  
Marylebone,Summary Conviction of Juvenile Offenders.  
[In Committee.] Sir E. Wilmot.

Summary Jurisdiction to Justices in certain cases of Seduction, and breach of promise of Marriage. Mr. W. Miles.

Metropolitan Police Courts.

[For second reading.]

To abolish capital punishment in all cases except Murder. Mr. Kelly.

To amend 7 W. 4, &amp; 1 Vict. for regulating attorneys and solicitors in Ireland.

Solicitor General for Ireland.

For the further amendment of the Poor Law.

[For second reading.]

For the improvement of Grammar Schools.

[In Committee.]

## REMOVAL OF COURTS FROM WESTMINSTER.

Petitions for the Removal of the Courts from Westminster to a more convenient situation, have been presented from  
Rugby, Reading, Worcester.

\* \* \* The House has adjourned till Wednesday the 29th April.

## THE EDITOR'S LETTER BOX.

OUR nineteenth volume will close with the present month, and will comprise a Digest Index to the Cases reported in this Volume, with Title Page, Table of Contents, and General Index.

On the completion of the next volume we shall publish a copious Index to the whole work,—comprising a period of ten years, during which more important changes have been effected in the law than in any previous century.

A correspondent enquires whether *subpoenae* should be tested in term, or whether they may be tested on the day on which they are issued.

We presume that "Vindex," who complains of the mechanical part of his occupation, is capable of higher things: we therefore recommend him to write more at large on the subject of the respective duties of solicitors and their articled clerks.

The communication on estates *pur autre vie* shall be inserted.

The letters relating to Powers coupled with Interest, and the Re-admission of Attorneys, are under consideration.

We again beg to remind our Querists that they should exert their own abilities before calling on others.

The subject of the Law of Marriage within the prohibited degrees of affinity, which we fully noticed in January last, shall be resumed in an early number.

We have no less than three correspondents, rejoicing in the name of "Civis :" perhaps they will each assume some distinctive addition.

"A Constant Reader" and A. C. shall be attended to.

We regret the delay in noticing some new and valuable works, but hope soon to attend to them.

# The Legal Observer.

SATURDAY, APRIL 25, 1840.

— — "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## SIR SAMUEL ROMILLY.

THE ordinary biography of Sir Samuel Romilly—his birth—his professional and public honours—his labours for the benefit of mankind,—have long been familiar to the public; but we have now<sup>a</sup> the advantage of possessing his own account, not only of his life—his professional struggles—his political career—but his private reflections, written down at the time,—his thoughts, his feelings, his opinions on all he passed through in his eventful life. For these, as a whole, we can only refer our readers to the volumes themselves, and a source of great and instructive pleasure they will find them; but we cannot resist putting down some of the early incidents in his life, as the best encouragement to our younger readers to persevere in the right course, and to prove to them, that if steadily pursued, it leads to final success.

Samuel Romilly was born in 1757, of respectable, amiable, and religious parents, but neither rich nor great, his father being a jeweller. In his first memoir, he gives a particular account of his early home, his relations, companions, and family servants. He was nearly self-educated, having a passion for books, and was soon destined for the law. His father endeavoured to give him a favourable opinion of the way of life of an attorney:—

"But unfortunately for the success of his plan, there was one attorney, and only one, among his acquaintance, a certain Mr. Liddel, who lived in Threadneedle Street, in the City,

and was, I believe, eminent in his line. He was a shortish, fat man, with a ruddy countenance, which always shone as if besmeared with grease; a large wig, which sat loose upon his head, his eyes constantly half shut and drowsy; all his motions slow and deliberate; and his words slobbered out as if he had not exertion enough to articulate. His dark and gloomy house was full of dusty papers and voluminous parchment deeds, and in his meagre library, I did not see a single volume which I should not have been deterred by its external appearance from opening. The idea of a lawyer and Mr. Liddel were so identified in my mind, that I looked upon the profession with disgust, and entreated my father to think of any way of life for me but that, and accordingly all thoughts of my being an attorney were given up, as well by my father as myself."

A year or two after, however, the idea was revived, and he was placed in the Six Clerks' Office.

"At the age of 16, I was articled to Mr. W. Michael Lally, one of the Sworn Clerks in Chancery, for a period of five years. The prejudice which Mr. Liddel had inspired me with against all lawyers, had been before this time removed, but if any vestige of it had remained, it must have yielded to the temper and manner of Mr. Lally."

He works on in the Six Clerks' Office, and goes through all its drudgery very cheerfully; but his pleasures and hopes were still chiefly literary. By degrees, however, a taste for the profession began to arise, although he had completed his twenty-first year before he entered himself of Gray's Inn,

"And took there a pleasant set of chambers, arranged my little collection of books about me, and began with great ardour the painful study of the law. My good friend Lally advised me to become the pupil of some Chancery draftsman for a couple of years, and for the first year to confine myself merely to reading under his direction and with his assist-

<sup>a</sup> Memoirs of the Life of Sir Samuel Romilly, written by himself, with Selections from his Correspondence. Edited by his Sons. In 3 vols. 1840.

ance. This advice I followed, and placed myself under the guidance of Mr. Spranger. I was the only pupil he ever had, and indeed his drawing business was hardly sufficient to give employment even to a single pupil; I did not, however, repent of the step I had taken. I passed all my mornings and part of most of the evenings at his house; he had a good library, which I had the use of; he directed my reading; he explained what I did not understand; he removed many of the difficulties I met with, and what was of no small advantage to me, I formed a lasting friendship with this very kind-hearted and excellent man, who was universally esteemed. As I read I formed a common-place book, which has been of great use to me, even to the present day. It is indeed the only way in which law reports can be read with much advantage."

He continued, however, his miscellaneous reading, but his main occupation was his profession.

"We used to meet at night at each other's chambers to read some of the classics, particularly Tacitus, in whom we (Romilly and an intimate friend, John Baynes) both took great delight, and we formed a little society to which we admitted only two other persons, Holroyd and Christian, for arguing points of law upon questions which we suggested in turn, one argued on each side as counsel, the other two acted the part of judges, and were obliged to give at length the reason of their decisions,—an exercise which was certainly very useful to all."

In Easter Term, 1783, he was called to the bar.

"By Michaelmas Term I had returned to business, or rather to attend the courts and to receive such business as accident might throw in my way. I had endeavoured to draw chancery pleadings before I was called to the bar, as an introduction to business when I should be called. In that way, however, the occupation I got under the bar was very inconsiderable, but soon after I was admitted to the bar I was employed to draw pleadings in several cases. This species of employment went on very gradually increasing for several years, during which I was occupied in the way of my profession, I had scarcely once occasion to open my lips in Court."

In 1784 he commenced going the Midland Circuit, and describes the leaders and juniors in business, and also his own clerk named Bickers, who was the husband of an old servant, and whom he employed out of charity.

"I certainly suffered during several years for my good nature. He could ride, and he could stand behind my chair at dinner; but this was almost all he could do; and though I sometimes employed him to copy papers for me, he wrote very ill, and made a thousand faults of spelling. The want of proper attendance, however, was far less disagreeable to

me than the jokes which he excited on the circuit. His appearance was singular and puritanical, and the first day he was seen on circuit he was named by the young men upon it "the Quaker;" an appellation by which he was always afterwards known. It is not easy to give an idea of the great familiarity which existed among the young men who went the circuit, of the strong disposition to turn things into ridicule which prevailed, and how very formidable that ridicule was. To all his defects Bickers added that of sometimes getting drunk; and he has often made me pass very unpleasant hours, under the apprehension that, half-elevated with liquor, and half inspired with the spirit of methodism which possessed him, he would say or do something which would afford an inexhaustible fund of mirth to the whole circuit."

His keeping Bickers, which he did till the day of his death, is strongly characteristic of Romilly's kindness of heart. His progress, both in London and on the circuit, however, was slow. At the end of his sixth or seventh circuit he had made no progress.

"I had indeed been in a few causes, but all the briefs I had had were delivered to me by London attorneys who had seen my face in London, and who happened to be strangers to the juniors on the circuit. They afforded me no opportunity of displaying any talents if I had possessed them, and they led to nothing. *I might have continued thus a mere spectator of the business done by others, quite to the end of the sixteen years which elapsed before I gave up my part of the circuit, if I had not resolved, though it was very inconvenient on account of the business I began to get in London, to attend the quarter sessions. \* \* \* I found this experiment very successful. I had not attended many sessions before I was in all the business there. This naturally led to business at the assizes, and I had obtained a larger portion of it than any man upon the circuit, when my occupations in London forced me altogether to relinquish it:—this, however, was at a period long subsequent," not until sixteen years' trial, as he has already said.*

Having thus traced the commencement of his professional fame and fortune, our readers may easily pursue his career, but we cannot close this notice without transcribing the following passage from his diary, written nearly at the close of his life, in 1817, with the highest professional prospects in view:—

"The labours of my profession, great as they are, yet leave me some leisure both for domestic and even for literary enjoyments. In these enjoyments, in the retirement of my study, in the bosom of my family, in the affections of my relations, in the kindness of my friends, in the good-will of my fellow citizens, in the uncourted popularity which I

know that I enjoy, I find all the good that human life can supply; and I am not, whatever others may think of me, so blinded by a preposterous ambition as to wish to change or even to risk

"These sacred and homeselt delights,  
This sober certainty of waking bliss,"  
for the pomp and parade and splended restraints of office; for the homage and applause of devoted but interested dependents; for that admiration which the splendour of a high station, by whomsoever possessed, is always certain to command, and for a much larger, but a precarious income, which must bring with it the necessity of a much larger expense. The highest office and the greatest dignity the crown has to bestow might make me miserable: it is impossible that it could render me happier than I already am."

## PRACTICAL POINTS OF GENERAL INTEREST.

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### MARKET OVERT.

The general rule of law is, that all sales and contracts of anything vendible in fairs and market overt (that is open) shall not only be good between the parties, but also be binding on all those that have any right or property therein. Market overt, in the country is only held on special days, provided for particular towns by charter or prescription; but in London every day, except Sunday, is a market day. The market place or spot of ground set apart by custom for the sale of particular goods, is also, in the country, the only market overt; but in London, *every shop in which goods are exposed publicly to sale, is market overt for such things only as the owner professes to trade in*, 2 Bla. Com. 449. And it has been recently held, that a sale of goods, being those in which he usually deals, made to a tradesman in his warehouse or shop in the city of London, is a sale in market overt, notwithstanding the construction of the premises be such that a person from the outside cannot see what is going on within. *Littledale*, J., said, that (referring to the rule as laid down by Blackstone from 5 Coke, 85) in his opinion, the circumstance of the alteration in the shops of London in which glazed windows were substituted for open fronts, did not render a sale in such shops less a sale in market overt than it would have been if they had continued in their former state; and *Coleridge*, J., said that it would, in his opinion, be productive of so much mischief to have the law on the subject questioned

that he could not consent to grant a rule on the subject. *Lyons v. De Pass*, 9 C. & P. 74.

### PURCHASE OF STOCK BY BANKRUPT.

By stat. 6 Geo. 4, c. 16, s. 80, it is enacted, that if any bankrupt shall have any government stock standing in his name of his own right, the Commissioners may, by writing under their hands, order all persons whose act is necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees. And where stock is purchased by a bankrupt for the purpose of defrauding his creditors in a fictitious name, on a bill being filed by the assignees, the Court of Exchequer will order the Bank to erase from their books the fictitious name, and insert that of the bankrupt. The following was the form of the decree: "Declare that the sum of £, stock standing in the Bank books is the property of the bankrupt, and ought to have been invested in his name, but that it was invested in the name of Thomas Rowe, who was a fictitious person, and let the name of Thomas Rowe be erased, and that of Barnard Angle be inserted." *Green v. The Bank of England*, 3 Yo. & Col. 722.

## NOTICES OF NEW BOOKS.

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*Points in the Law of Discovery.* By James Wigram, Esq. one of Her Majesty's Counsel. Second Edition. London: A. Maxwell.

This work, as announced on the title page, is not a complete work on the Law of Discovery as administered in Courts of Equity, but a treatise confined to certain important "Points," which are set forth in the following propositions:—

"1. The pleadings in a cause, and rules of practice, unconnected with the laws of discovery, determine *a priori* what question or questions in the cause shall first come on for trial. And the right of a plaintiff to discovery is in all cases confined to the question or questions in the cause, which, according to the pleadings and practice of the Courts, is or are about to come on for trial.

"2. It is the right, as a general rule, of a plaintiff in equity to exact from the defendant a discovery upon oath as to all matters of fact, which, being well pleaded in the bill, are material to the plaintiff's case about to come on for trial, and which the defendant does not by his form of pleading admit.

"3. The right of a plaintiff in equity to the benefit of the defendant's oath, is limited to a

discovery of such material facts as relate to the '*plaintiff's case*,' and does not extend to a discovery of the manner in which the '*defendant's case*' is to be exclusively established, or to evidence which relates exclusively to his case.

"4. Every objection to discovery which is founded upon a denial of the plaintiff's right of suit, or of his right to proceed with it in its existing state, should regularly be taken by demurrer or plea, according to the circumstances of the case;—and, where the objection is not so taken, and the defendant *answers* the bill, he will, in general, be held to have waived the objection, and will be obliged to answer the bill 'throughout.'

"5. Every objection to discovery which is not founded upon a denial of the plaintiff's right of suit, or of his right to proceed with his suit in its existing state, but depends exclusively upon the nature of the discovery sought, may regularly be taken by *answer* as well as by demurrer or plea. As the mode of taking objections of this nature is thus unfettered by rules of form, a defendant who has not actually answered an interrogatory or interrogatories to which the objection may apply, cannot, as a general rule, be held to have waived it upon any merely technical grounds."

We congratulate the profession that a man of so much eminence as Mr. Wigram has been induced to publish the result of his experience and research in this important branch of law. The purpose and general scope of the jurisdiction exercised by Courts of Equity in compelling discovery are thus stated by Mr. Wigram:

"A bill in equity generally requires, and the Court enforces, the *answer* of the defendant or party complained of upon oath. An *answer* is thus required and enforced, with a view to furnish an admission of the case made by the bill, either in aid of proof, or to supply the want of it, and to avoid expense.

"The discovery which is thus required and enforced is not confined to a discovery of facts resting merely in the knowledge of the defendant, but extends, within certain limits, to deeds, papers, and writings in his possession or power."

The difficulties attending this branch of equitable jurisdiction, with a view to preventing its working injustice, are well described.

"The exercise of a jurisdiction of this nature cannot be otherwise than pregnant with danger to the interests of those against whom it may be enforced, unless careful provision were made for guarding against its abuse. Upon a motion for the production of documents, in the case of *Cock v. St. Bartholomew's Hospital*, 8 Ves. 141, Lord *Eldon* said: 'The Newcastle case is a good lesson upon this subject of production. They produced their charters to satisfy curiosity; some persons got hold of them, and the consequence was, that the cor-

poration lost 7000*l.* a year.' This observation applies to a specific case; but the mischief at which it points is not confined to cases in specie the same with that which produced it. Similar consequences *may*, in any case, ensue discovery—an observation which, without comment, proves the necessity of placing under strict regulation the jurisdiction exercised by Courts of Equity in compelling discovery.

"In *Shaftesbury v. Arrowsmith*, 4 Ves. 71, Lord *Thurlow* says: 'Permitting a general sweeping survey into all the deeds of the family would be attended with *very great danger and mischief*; and where the person claims as heir of the body, it has been very properly stated, *that it may shew a title in another person, if the entail is not well barr'd*.' And see 3 Ves. jun. 501, in *Wallis v. The Duke of Portland: Van-sittart v. Barber*, 9 Price, 641; Hare, 185, 186.

"The argument which thus arises out of the possibility of mischief to an innocent party, from a discovery improperly enforced—if carried to its extent—would strike at the very foundation of the jurisdiction itself. The argument, however, is not all on one side. Suppose (to put an extreme case) a man wrongfully to possess himself of another's estate, and also of all the evidences of his title to it. No suggestion of *possible* mischief to an innocent party would support the conclusion that a Court of equity, rather than exercise a jurisdiction attended with such risk, should permit the wrong-doer to withhold from the injured party his estate—by withholding the only means of *trying* his title to it.

"Nor is the possibility of mischief of the nature suggested by Lord *Eldon*, in the case of *Cock v. St. Bartholomew's Hospital*, the only evil to be apprehended from the compulsory disclosure of evidence before the hearing of a cause. The danger of perjury, as will hereafter be seen, is the foundation of a settled rule of practice, by which the right of a party to discovery is limited to the evidence necessary to sustain his own case, to the exclusion of that by which the case of his opponent exclusively may be sustained."

Mr. Wigram states that his object has been to investigate and explain some of the leading rules by which the exercise of this jurisdiction is regulated in practice. After stating some points which a general and systematic treatise on the law of discovery would contain, but which are excluded from the scope of the present treatise, the author thus proceeds:

"For the present, then, a case will be assumed—1, in which the jurisdiction of the Court over the subject-matter of the suit does not admit of controversy;—2, in which (except where it is otherwise expressly noticed) the distinction between a bill for discovery only and a bill for discovery and relief does not call for observation;—and 3, in which the scope of the cause is *single*, in the sense in which the word 'single' has been explained in a former place.

"Assuming, then, a simple case of the description just noticed, some further observations may usefully be made by way of introduction to the points about to be investigated.

"A right understanding of many, if not of the majority of those points, requires that the attention of the reader should constantly be alive to a peculiarity which (excluding a defence by demurrer or disclaimer) for the most part distinguishes a defence in equity from a defence at law. At law, a defendant has merely to put upon the record the case upon which he relies as an *answer* (i. e. *as his defence*) to the plaintiff's claim in the action; and to this the record containing his defence is confined. In equity, it is otherwise. In equity, as at law, the defendant must not only put upon the record the case which he relies upon as an *answer* (i. e. *as his defence*) to the claim made against him, but he is also obliged—*in addition to* and *upon the same record* with this defence—to give that discovery to which the common rule, already noticed, entitles the plaintiff. The word *answer*, then, as applied to a defence in equity, is a complex term,—embracing two things *essentially* distinguishable from each other: namely, 1. The *defence*, i. e. *the defendant's case*; and, 2. The *examination* of the defendant, consisting of the *discovery sought by the bill*. Such are the distinct parts of which an answer in equity may be said, in general, to consist. But, in practice the word "answer" is applied, almost indiscriminately,—to the defence,—to the discovery or examination,—to the record which comprises both,—and to that thing which is technically called an answer *in subsidium* (as distinguished from an answer *in support*) of a plea, and which, though admissible in pleading, is neither an examination nor (properly speaking) a defence. To the general and loose sense in which the word "answer" is thus used, without due regard to the essential distinctions just pointed out, may be traced much unprofitable argument and much of the confusion which appears to exist as to a plaintiff's right to discovery. An answer, so far as it is a *defence* only, and a *plea in bar*, as will hereafter be seen, stand upon precisely the same footing as to a plaintiff's *right to discovery*. Where the defence is by *plea*, the plaintiff is entitled to all such discovery (if any) as may be necessary to try the truth and validity of the defence so made; and this right, so far as the matter of the plea is concerned, is just as extensive when the defence is made by *plea*, as when it is made by *answer*. In fact, the only difference between the two modes of defence, so far as the right to discovery is concerned, will be found to consist in this—that, in the former, (the defence by *plea*), the point made by the *plea* is tried *in the first instance*, and the discovery *therefore*, in the first instance, is confined to that point; whereas, if the matter of the *plea* be insisted upon by *answer*, *other points* in the cause, unconnected with the matter of the *plea*, go to trial *simultaneously* with that matter, and the discovery *therefore* is extended to those points also.

"The distinction between that part of the record called an *answer* which constitutes the *defence*, and that part of it which contains the *discovery* required by the bill, is of the essence of some of the most important rules in the law of discovery. To a neglect of this distinction may be traced the confusion in which some important points in that law have become involved.

"Where a plaintiff seeks to obtain discovery to which he has no right, or to obtain it by a form of proceeding not in accordance with the practice of the Court, the defendant, as will hereafter be seen, may object to give the discovery required, and demand the judgment of the Court whether he should give it or not.

"In addition to objections challenging the plaintiff's right of suit, or the regularity of the proceeding by which he seeks to obtain discovery, Courts of equity in many cases refuse to enforce *particular* discovery upon objections founded in the nature of the discovery sought, and in that alone;—as where it would subject the defendant to penalties,—where it is immaterial,—where it relates exclusively to the defendant's case,—and upon other grounds which will be noticed hereafter.

"As the appropriate mode of taking an objection to discovery varies in many cases with the ground and nature of the objection itself, it is of importance to distinguish between those objections to discovery which challenge the plaintiff's right of suit, or the regularity of the proceeding by which he seeks to obtain it, and those objections to discovery which are grounded upon the nature of the particular discovery objected to. It is one thing for a defendant to say, 'I will not answer because you have no title to relief against me at law or in equity, or because you seek it in a manner not warranted by the practice of the Court,' and another to say, 'I am not bound to make this discovery, even admitting your title were as you have asserted, and your manner of seeking it to be free from all objection.' The fourth and fifth propositions stated below, are founded upon the above distinction. The fourth, relates to the appropriate mode of objecting to discovery, where the objection is founded upon a denial of the plaintiff's right of suit, or to the manner in which he proceeds to obtain it; and the fifth, relates to the appropriate mode of objecting to discovery where the objection is founded exclusively upon the nature of the discovery itself."

Mr. Wigram then investigates each of the five propositions above stated. The second and third of which, comprising by far the most numerous class of cases, are treated at great length, and we need scarcely say that the whole work is worthy of the extensive learning, sound judgment, and acuteness for which the learned author is distinguished. The present edition comprises the points involved in the recent cases of *Adams v. Fisher*, 3 Myl. & Cr. 549; *Neate v. Latimer*, 2 Younge & Col. 257, 11 Bligh 149;

*Pilkington v. Hinsworth*, 1 You. & C. 612; and *Carter v. Goetze*, 2 Keen 581. The other principal decisions reviewed in the course of the work are *Hindman v. Taylor*, 2 Bro. C. C. 7; *Sanders v. King*, 2 Sim. & S. 277; *Thring v. Edgar*, Ib. 280; *Pennington v. Beechey*, Ib. 282; *Attorney General v. Ellicson*, 4 Sim. 238; *Crowley v. Perkins*, 5 Sim. 552; *Hardman v. Ellames*, 5 Sim. 640; *Lambert v. Rogers*, 2 Mer. 489. Besides these cases Mr. Wigram notices those of *Murray v. Walters* and *Grane v. Cooper*, which are not reported, but doubtless his statement of them may be implicitly relied on.

## THE STUDENT'S CORNER.

### STAMP ACT.—INDORSEMENT.

Mr. Editor,

Will you or any of your readers be good enough to answer the question arising upon the following case: the question certainly appears a simple one, but as a doubt has arisen, and I have referred to the act and several books upon the subject, without meeting anything bearing upon the point, I take the liberty of submitting the same to you for your opinion.

A mortgage deed was executed some years ago, which with the receipt, attestation, &c. ran close to the prescribed number of folios. Upon the interest becoming due, it was received by the solicitor for the mortgagee, who upon handing the same over to his client, generally took a receipt for the amount *upon the deed*. Now the several receipts upon being counted, words and figures together, number four folios, being at least three folios beyond the number allowed for the stamps on the deed. The question then is, whether the receipts referred to, would come under the general denomination of "any schedule, receipt, or other matter put or endorsed theron," as in the act, and thereby invalidate the deed.

TYRO.

## SELECTIONS FROM CORRESPONDENCE.

### PRIVILEGE OF ATTORNEYS.

Sir,

In a recent number of your valuable journal, p. 425, I notice a letter from J. W., indignantly complaining of the privilege possessed by attorneys of being sued in their own Courts.

This terrible privilege your correspondent describes as "affording an attorney the means of putting suitors to a needless and useless expense, as the costs are lost."

Now I quite agree with J. W. as to the fact of the costs being lost, and his client put to

"a needless and useless expense;" but it seems strange to me that it should never have occurred to him that, had he exercised the proper degree of care in searching the Roll of Attorneys previously to issuing the writ, this heavy loss would not have been incurred.

I trust J. W. will adopt my hint, and search the roll a little the next time he sues for rent due to old ladies.

PHILOLTHES.

Sir,

As a member of the profession, I cannot refrain from observing, that your correspondent "J. W." p. 425, would have done well if he had kept the circumstance he relates in your last number, to himself, instead of putting it forth as a reason for his brethren to be deprived of one of their most ancient privileges, because he was ignorant of that of which any Tyro in the profession could have informed him.

I would remark, that if "J. W." had been as wise as his antagonist, to whom he refers as "this respectable gentleman," possibly as respectable as himself, though perhaps not so prosperous, he would have saved "the needless and useless expense" of which he complains, and thus saved an attorney the unpardonable sin of doing that for himself, which, if he were acting for a client, he would be bound to do.

A SUBSCRIBER.

### PROPOSED ARTICLED CLERKS' CLUB.

Sir,

HAVING read in a late number of the Legal Observer a letter from "Milo," I not only highly approve of the club he proposes, but am sure, that if it was once set on foot, it would soon be brought to bear, without giving any particular trouble to any one in bringing it about. I know several, who, as well as myself, would gladly join it; and I am sure every one must allow that it would be a very useful society, and tend to the improvement of those who are preparing to become members of the profession. Rules, of course, must be had recourse to, as well to sustain the respectability, as stability of the club. A few hints from some of your correspondents of more experience than myself, as to the best mode of establishing such a club would be highly acceptable to all articled clerks.

F. L. T.

### CITY ATTACHMENT.—IMPRISONMENT.

A defendant in an action in the Lord Mayor's Court, lately surrendered, thinking thereby to get rid of the attachment, having removed the proceedings into one of the Superior Courts of Westminster. He then took out a summons before a Judge to shew cause why he should not be discharged out of custody, which his Lordship refused, on the ground that the imprisonment being voluntary, it did not come within the act for the abolition of arrest.

CIVIS.

**ATTORNEYS TO BE ADMITTED.***Trinity Term, 1840.**[Continued from p. 485.]*

<i>Clerks' Name and Residence.</i>	<i>To whom articled and assigned.</i>
Clavering, John, 44, Devonshire Street, Queen's Square.	George Delmar, Lincoln's Inn Fields.
Clarke, William, 4, New Millman Street; Guildford Street; and Brighton.	Somers Clarke, Brighton.
Crompton, John, High Crompton, Lancashire.	James Whitehead, Oldham, Lancashire.
Collins, George Browne, 12, Liverpool Street, King's Cross; and St. Columb, Cornwall.	Thurston Collins, Saint Columb.
Chambers, Joseph, 1, Butler's Place, Chapel Street, Pentonville; and Portsmouth.	James Hoskins, Portsmouth.
Chaundler, Thomas, 39, Baker Street, Lloyd Square; and County Terrace, New Kent Road.	Thomas Hodgson Holdsworth, Gray's Inn Square.
Clark, Thomas Clark, Camberwell, Road opposite the Navy School; Killerby Hall, Durham; and Crimscot Street, Bermondsey.	Jonathan Ward, Stokesley, Yorkshire; assigned to Bowyer Mewburn, Great Winchester St.
Clinton, William Henry, 50, Burton Street, Burton Crescent; and Whittington, near Worcester.	John Parker, Worcester.
Chillingworth, John Williams, 14, Bedford Place, Kenton Street; Tavistock Place; and Burton Crescent.	Edward Richmond Nicholas, Bewdley.
Day, John, 17, Trinity Square, Southwark; Milverton, Somerset; 5, Saint Mary's Sq. Lambeth; and 3, Gray's Inn Square.	Edward Amos Chaplin, 3, Gray's Inn Square.
Davies, Thomas, Thavies' Inn; and Cardigan.	Oliver Lloyd, Cardigan; Henry Beever, Salford.
Darwell, Thomas the younger, 9, Great Coram Street; 9, Derby Street; and Manchester.	James Frederick Beever, Salford.
Dolman, Frederick William, 57, Clarendon Street, Clarendon Square; and Lincoln's Inn Fields.	Robert Cruickshank, Gosport; assigned to Antonine Dufaur, Lincoln's Inn Fields.
Doughty, Thomas Neale, 1, Oriel Place, College Street, Chelsea.	William Saltwell, Carlton Chambers, Regent Street.
Davies, Henry Daniel, 21, Warwick Street, Regent Street.	Daniel Davis, 21, Warwick Street, Regent Street.
Dowman, William, the younger, Sudbury; and 7, Ebury Street, Pimlico.	William Dowman the elder, Sudbury, Suffolk.
Day, Samuel, 6, Ely Place; and Saint Neots, Hants.	William Day, Saint Neots.
Densham, Richard, Bampton, Devon.	George Sharpe, Upper Wharton Street, Lloyd Square.
Davis, Henry Touchet, articled by the name of Henry Touchet, Clevedon, near Bristol, and Bath.	Thomas Macauley Crutwell, Bath.
Davies, Edward Martin, 8, Euston Grove, Euston Square.	Thomas Thomas, Swansea.
Ellis, Arthur, 6, Charles Street, Grosvenor Sq.	George Streater Kempson, Abingdon Street, Westminster: assigned to John Luke Wetten, Conduit Street.
Edwards, William, 41, Argyle Street, New Road; Framlingham; and 24, Saint Thomas's Street, East	William Hazard, Redenhall with Harleston.
Edwards, William James, 1, Stafford Place, Pinlinc; and Framlingham, Suffolk.	William Edwards, Framlingham.
Eyre, William Vardy, 11, Lower Brook St. Grosvenor Square; and Deddington, Oxfordshire.	Samuel Field, Deddington.
Eyre, Frederick Edwin, 22, Bryanstone Sq.	Walpool Eyre, 22, Bryanstone Square; assigned to John Pinniger, Gray's Inn Square.

*Clerks' Name and Residence.*

**Fisher, Charles,** 65, Charing Cross; Nelson Terrace; Newport; Barnstaple; and 19, Edgware Road.

**Field, William,** 64 Great Russell Street, Bloomsbury; and 24, Tavistock Place, Tavistock Square.

**Tookes, Thomas the younger,** 3, Fig Tree Ct., Temple; Sherborne; King William Street; Tavistock Square; and Norfolk Street, Strand.

**Futvoye, Edward,** 25, Myddleton Square.

**Fen, Robert,** 3, Raymond Buildings; and Chester-le Street,

**Finlow, Richard Whiteley,** Liverpool.

**Foster, Thomas,** 15, Ely Place, Holborn.

**Goodman, Hiller,** 18, Salisbury Street, Strand; Southampton; and 23, Southampton Buildings, Chancery Lane.

**Geldard, Christopher John,** 36, Sidmouth St. Middlesex; Cappelside, near Settle, Yorkshire.

**Gay, William,** 1, Chapel Street, Bedford Row; King's Lynn; and 6, New Ormond Street, Queen Square.

**Gadsby, John,** 34, Arundel Street, Strand; Derby; and 2, Old Millman Street, Bedford Row.

**Gordon, William,** 57, Old Broad Street.

**Grant, Charles William,** Leeds; Great Russell Street; and Plowden Buildings, Temple.

**Gell, Alfred,** Lewes, Sussex.

**Gwyne, John,** Hartley Witney, County of Southampton; and Thavies Inn.

**Gurney, John,** 3, Wakefield Street, Brunswick Square; Trehaverne; and Everett Street, Russell Square.

**Gutteres, George,** 6, Park Place, Camberwell Grove.

**Gall, James Charles,** 10, Saint Thomas's St. East: Gray Terrace, Dover Road; Singleton Street; Butterworth Street; and Great Chart Street.

**Good, John Wiltshire,** 32, Bedford Row.

**Harben, Peter Tait,** 16, Bridge Street, Vauxhall.

**Hook, St. Pierre Butler,** 21, Brunswick Crescent, Lambeth.

**Hulton, Frederick B. Copley,** Preston.

**Hinton, Frederick,** 1, Red Lion Square; and Bristol.

**Hill, Richard,** 8, Featherstone Buildings; 1, Cranmer Place, Waterloo Bridge; and 9, Great Ormond Street.

**Hanbury, Thomas James,** 1, Tonbridge Place, New Road; and 69, Lamb's Conduit Street.

**Hair, Thomas,** Kidderminster.

**Haxby, Joseph Barber;** 11, Chapel Place, Cavendish Square; and Wakefield.

**Holmes, Edward Carleton,** 45, Guildford St; 6, Raymond Buildings.

*To whom articled and assigned.*

**Joseph Fisher,** Bury Street, St. James's; assigned to Thomas Hooper Law, Barnstaple; assigned to Samuel Fisher, Bucklersbury. Henry Downe Barton, Exeter.

**Henry Charles Goodden,** Sherborne.

**James Fairbank,** Staple Inn; assigned to Henry Coode, Guildford Street.

**John Burrell,** Durham.

**Richard Finlow,** Liverpool.

**Joseph Foster,** Wolverhampton; assigned to Edward Henry Rickards, Lincoln's Inn Fields.

**Henry Gilbert,** Southampton; assigned to John Barney, Southampton.

**William Robinson,** Settle.

**Philip Wilson,** King's Lynn, Norfolk.

**David Welch,** Derby; assigned to William Stephens, Queen Street, Cheapside.

**Alexander Gordon,** 57, Old Broad Street.

**John Hartley,** Settle, Yorkshire.

**Thomas Harding Gell,** Lewes.

**Thomas Bunnis,** Elvetham; 17, Essex Street, Strand.

**William Paul,** Truro, Cornwall.

**Thomas Webb, Gilbert,** Brabant Court, Philpot Lane.

**William Brooke,** Kenninghall, Norfolk; assigned to William Ransom, Stowmarket; assigned to Daniel Calver, Kenninghall, Norfolk.

**George Anstie,** Devises, Wilts; assigned to Edward Francis Fennell, 32, Bedford Row.

**William Waller,** 12, Clement's Inn.

**Sir George Stephen, Knight,** 17, King's Arms Yard, Coleman Street.

**Charles Buck,** Preston.

**James Pullen Hinton,** Bristol.

**William Graham,** Abingdon.

**Thomas Sewell,** Newport, Isle of Wight; assigned to Robert Carr, Forster, Raymond Buildings.

**George Price Hill,** Worcestershire; assigned to Henry Maddocks Daniel, Worcester and Kidderminster.

**Twisleton Haxby,** Wakefield, Yorkshire.

**William Holmes,** Brooksfield near Arundel; assigned to Edward Foach Hillier, Cumming Street, Pentonville.

*Clerks' Name and Residence.*

Homes, William, the younger, 5, Salisbury Street, Strand; and Ledbury, Herefordshire.  
Hazell, Edward Wells, 19, King Street, Holborn; and Oxford.  
Hitchcock, William, 25, Claremont Terrace, Pentonville.  
Holland, Thomas Moore Woollams, Upton-upon-Severn; and 7, Harpur Street, Red Lion Square.  
Harrison, George, 29, Mount Street, Whitechapel; Bishop Wearmouth, Durham; and Colet Place, Commercial Road.  
Jones, Daniel Price, 34, Penton Place, Pentonville; 33, Arundel Street; Newcastle Emlyn; 24, Upper Park Street, Islington; and 7, Upper Wharton Street, Lloyd Square.  
Johnston, George, 18, Hunter Street, Brunswick Square.  
Johnson, William Henry, 21, Gower Place, Euston Square.  
Jenkins, George Thomas, 24, Nottingham Place, Marylebone.  
Ilderton, Henry Decinius, 6, Grove Terrace, St. John's Wood; Mortimer Street; and Margaret Street, Cavendish Square.  
Jones, Thomas, Shrewsbury.  
Inglis, James, Colchester.  
Kemp, George Baring, Naples; 35, Clarendon Street, Somer's Town; and Brighton.

*To whom articled and assigned.*

William Homes, Pool End, near Ledbury; assigned to Thomas Jones, Ledbury.  
George Parsons Hester, Oxford.

Charles Hyde, Ely Place.

Thomas Bird, Upton-upon-Severn; assigned to Thomas Loftus, New Inn.

George Harrison, Bishop's Wearmouth; assigned to Joseph John Wright, Sunderland.

Daniel Price, Talley, Carmarthenshire.

Joseph Heapy Watson, 19, King's Arm's Yard.

William Brackenridge, 16, Bartlett's Buildings.

Thomas William Budd, Bedford Row.

George Leeke Baker, Lincoln's Inn Fields.

Henry Jones, Shrewsbury.

William Mason, Colchester.

Joseph Maynard, Mansion House Place; assigned to Frederick Lewis Austen, 6, Ely Place.

[*To be continued.*]

## SUPERIOR COURTS.

### Queen's Bench.

[Before the Four Judges.]

#### CANAL.—POOR.

Where certain proprietors of a navigation took possession of land under the provisions of a private act of parliament, and cut and dug it, and made cuts, locks, and towing paths; and commissioners appointed under the act had awarded to the owners of the land a sum amounting to thirty year's purchase in satisfaction of such taking, but there was no regular conveyance of the land to the canal proprietors: Held, that these circumstances constituted them occupiers of the land, and as such liable to be rated to the relief of the poor.

This was an action of replevin. The declaration stated that the defendants were the parochial officers of Hanham Mills; and that the plaintiffs were the present proprietors of the navigation from Bath to that place, under an act entitled "An Act to make navigable the river Avon from Bath to Hanham Mills," that the defendants had unlawfully seized the goods of the plaintiffs, &c. The defendants pleaded that the plaintiffs were the occupiers of certain towing-paths, locks, and cuts &c., and that they had been rated as such occupiers, &c.

A case was submitted to the Court to raise the question of the plaintiff's liability, and that case stated the acts under which this navigation was made, and set forth the finding of the commissioners that the plaintiff's should pay a certain sum, amounting to a thirty year's purchase, to the owners of land taken for the purposes of the navigation under the compulsory powers of the acts.

The *Attorney General* for the plaintiffs.—The right of the plaintiffs to the navigation entirely depends on the 10 Anne, c. 8,<sup>a</sup> and the 47 Geo. 3; by the first of which the right to make the navigation, and to take tolls, was

<sup>a</sup> By s. 2 of the 10 Anne, c. 8, certain persons, therein mentioned, were appointed commissioners for settling any difference that might arise between the undertakers, &c. and the proprietors of the said lands, tenements or hereditaments; and they were thereby empowered to settle and determine what satisfaction every such person should have for such proportion of his lands, &c. as should be cut, digged, removed or made use of as aforesaid, and for the damage that should be thereby sustained; and to adjust and settle what share and proportion of such *purchase money* or satisfaction every tenant or other person having a particular estate, term or interest in any of the premises, should have for his respective interest or right.

conferred; and by the second the right to take land for towing-paths, &c. was created. There are no provisions in the local act respecting rateability. That is left entirely to the 43 Eliz. It does not seem that the plaintiffs can be liable to be rated in respect of their locks, but if they are, then they are not liable in respect of their towing-paths, for they are not the owners of the soil, but have merely an easement over it. The plaintiffs here are at all events not exclusive occupiers, which, in the cases of *The King v. Jolliffe*,<sup>b</sup> and *The King v. Bell*,<sup>c</sup> was deemed necessary in order to create the liability. To a certain extent the plaintiffs as proprietors of this very navigation, were held in *The King v. Thomas*,<sup>d</sup> (where the substance of these local acts is set out) not to be liable to be rated in respect of the land covered with water, being part of the River Avon, because they were occupiers; but in respect of the cut and the locks, they were held to be occupiers, and therefore rateable. But at that time it was taken for granted that the soil of the cuts was in the proprietors of the company. That, however, is a mistake. They have no conveyance of the soil, but they pay a compensation for a licence to use it, the soil itself remaining in the former owners. It having been determined<sup>e</sup> that the proprietors are not liable, but in respect of occupation only, though they may have in some respects an exclusive right of passing over the soil; and the fact being now apparent that the proprietors of this navigation are not the proprietors of the soil, but have a mere easement over it, then all the distinction between the cuts and towing-paths and the river is gone. The cases already cited, shew that the proprietors of the navigation cannot be considered as proprietors of the soil. They have but an easement over a public highway; for the bed of the river, and the towing-path by the side of the river, are public highways. All the King's subjects have a right to use it; *The King v. The Severn and Wye Company*.<sup>f</sup> As to the towing-path, it is clear that the rate cannot be maintained in respect of that; for though the plaintiffs may have in some respects an exclusive right over it, yet it is not a property within their occupation; nor is the soil of it in them. *The King v. Jolliffe*,<sup>g</sup> is expressly in point here.<sup>h</sup> *The King v. Bell*,<sup>i</sup> is not an authority the other way, for there the parties had so conducted themselves as to convert the grant made to them of a way-leave into a real and exclusive occupation, and they were rated in respect of their occupation. The right of the defendants here to levy the rate cannot

be supported—the action of replevin is well brought, and the plaintiffs must have judgment.

*Mr. Graves, contra.*—In this case it has been expressly found that the plaintiffs are the proprietors of the locks and the towing-paths. They have paid a sum in satisfaction for them to the owners of the soil. It is clear then that on the authority of *The King v. The Mersey and Irwell Navigation*,<sup>j</sup> they are liable to be rated in respect of that property. The act here gives the proprietors a right to purchase lands. They have purchased lands, and it might have been expected that after the case of *The King v. Thomas*, no dispute would ever have been raised respecting the liability of the proprietors to be rated for the locks and towing-paths. It is absurd to say that the proprietors have a mere easement. Is a right to make a canal through another man's land a mere easement? The right of passing over the land may be so, but the right to dig it, to cut it up, and to lay it under water, must be more. In *The King v. The Chelsea Water Works*,<sup>k</sup> it was expressly held that the proprietors of the water works, who, by royal permission, had been allowed to make a reservoir in St. James's Park, and to lay down pipes, &c. were rateable as occupiers in respect of such reservoir, and also in respect of the land below the surface, where they laid down pipes, though another person was rated for the herbage. The occupation was similar in *The King v. Bell*,<sup>l</sup> and therefore, without disputing that occupation is necessary to rating, it may be contended that such occupation exists here. The proprietors here received their first powers from the 9 Anne. That act gave them power to purchase lands. The 47 Geo. 3, which afterwards passed, recited that they had purchased lands, and made works, but that they had not power under the former act, to make towing-paths. It therefore gave them that power. That shews that the legislature itself treated them as occupiers. In *The King v. The Mayor of London*,<sup>m</sup> a barge-way and toll-gate had been purchased by the corporation of London under an act similar to the present, and a rate on the corporation, on the ground of liability by occupation, was there held valid. It is clear, therefore, that in respect of the cut and locks there is a sufficient liability to rate, and that the defendant have such a vested interest in the towing-paths, as to make them rateable for such paths. And *The King v. The Chelsea Water Works* shews that they are liable in respect of the pipes underground. The question of occupation did not arise in *The King v. The Severn and Rye Railway Company*, which turned altogether on the company assuming a public duty, and afterwards attempting to claim the privilege of laying it down at pleasure. The shares in this company have already been decided to be real estate,<sup>n</sup> and the proprietors are rateable in respect of the

<sup>b</sup> 2 Term Rep. 90.    <sup>c</sup> 5 Maule & S. 221.

<sup>d</sup> 9 Barn. & C. 114.

<sup>e</sup> *The King v. The Mersey and Irwell Navigation*, 9 Barn. & Cres. 95; *The King v. The Aire and Calder Navigation*, *ib.* 820.

<sup>f</sup> 2 Barn. & Adol. 646.    <sup>g</sup> 2 Term Rep. 90.

<sup>h</sup> See also *The King v. The Trent and Mersey Navigation*, 4 Barn. & C. 57.

<sup>i</sup> 7 Term Rep. 598,

<sup>j</sup> 9 Barn. & C. 95.    <sup>k</sup> 5 Barn. & Ad. 156.

<sup>l</sup> 5 Maule & S. 221.    <sup>m</sup> 4 Term Rep. 21.

<sup>n</sup> *Buckeridge v. Ingram*, 2 Ves. jun. 652

land of which they have become owners or occupiers under the two acts.

The Attorney General replied.

Lord Denman, C. J.—This case has been argued with a great provision of learning; but the question simply turns on the terms of the act of parliament, and on what has been done under it by the company. Are the proprietors of the company occupiers under this act? I have not a doubt that they are, and that they are rateable in respect of being so. Suppose these persons had chosen to trespass on the lands of another, and had held possession of those lands, and that an action had been brought and the jury had given the full value of the land. If the trespassers had continued in possession, the owner of the land might not have conveyed, but when the parish had come to these permanent trespassers and asked for a rate in respect of their occupation, they ought not to be allowed to turn round and say that they were not the owners of the land, and so were not liable to be rated. As between themselves and the parties dispossessed they might not be owners nor occupiers, but as between themselves and the parish they would certainly hold that character. What would it signify to the parish whether they owned the land under a regular conveyance or not? But that is a much weaker case than the present. The act of Anne says that the company may take and occupy lands, and speaks of the purchase money for the lands, and that the commissioners are to give satisfaction to the owners whose lands, &c. are cut, digged, removed or made use of as aforesaid, and for the damage that should be thereby sustained. Now here, in this case there has been an inquisition, by which it appears that the jury gave thirty years' purchase to the lord of the fee under this provision of the act for lands taken by the plaintiffs. There can therefore be no doubt that that was given in satisfaction of the taking of the land, and that these canal proprietors are the occupiers of the land thus taken. I need not go more particularly into the case, so far as it relates to the towing-paths, as there seems no doubt that they consist of land now belonging to the proprietors of this company, and taken by them from the unwilling owners of the soil under the compulsory clauses of the act of parliament. But, with respect to the towing-paths, I must say that I do not think that the reservation of the right of other persons of the King's subjects to come upon them for the purpose of rating, prevents the canal proprietors from being the occupiers of the land thus employed. On the whole, I am of opinion that the verdict must be for the defendant.

Mr. Justice Littledale.—I think it quite clear that these plaintiffs must be considered under the words of this act as the occupiers of the cut and towing-paths, and that consequently the rule on them as such was properly made.

Mr. Justice Williams and Mr. Justice Coleridge concurred.

Judgment for the defendant.—*Bruce and the Bath River Company v. The Churchwardens of Hanham Mills*, H. T., 1840, Q. B. F. J.

### Queen's Bench Practice Court.

HIGHWAY.—NON-REPAIR.—ADJOURNING FINE.—ENLARGING RULE.

Where a rule has been obtained for imposing a fine on a parish for non-repair of a highway, the Court will enlarge it, if the state of the season is such as to render it inconvenient to proceed with the repairs of the highway.

*Hoggins* shewed cause against a rule obtained by *J. S. Wortley*, for imposing a fine on the township for non-repair of a road. The affidavit on which the application was founded, stated, that since November only about 70/- had been expended in repairs. The defendants had been found guilty on an indictment against them at the January Sessions, 1839; and in Michaelmas term following a rule *nisi* was obtained to impose a fine on them. When the rule came on to be argued, it was agreed it should be enlarged, so that the defendants might make the requisite repairs. *Hoggins* now contended that at this season, and especially in the present year, the Court would enlarge the rule. It was not possible to make the necessary repairs until the spring season was further advanced. This was the uniform practice at sessions.

*Wortley* submitted that the public convenience rendered it necessary for the rule to be made absolute without delay.

*Patteson*, J.—At this time of the year it is not an unreasonable thing to ask for an enlargement of the rule; and it seems to me it may, without inconvenience, be enlarged till next term.

Rule enlarged.—*Regina v. The Inhabitants of Walton*, H. T. 1840. Q. B. P. C.

### Common Pleas.

PARTICULARS.—AMENDMENT.—EXECUTION.  
—HEIR.

Where two actions were brought against executors, the former against them as executors, and the latter in their own right, the plaintiff was allowed to amend his particulars in the former by adding items sought to be recovered in the latter.

*E. V. Williams* shewed cause against a rule *nisi* obtained by *Wilde*, Serjeant, for discharging an order of Lord Denman, C. J., to amend the plaintiff's particulars. It appeared from the affidavits that the plaintiff was a stone-mason, and had been employed by the testator to erect a mansion. It was begun in 1828, and completed in September 1831, Wilkins, the testator, having died in May 1831. The writ, which was in *assumpsit*, was sued out in 1835, and another action was brought against the present defendants, in their individual capacity, to recover for that portion of the work which had been done since the testator's death; it being proved that alterations were made in the building since that time. Both actions were referred, and the heir of the testator was made a party to the reference. The arbitrator by his award, directed the second action to be discontinued, and that the verdict in the

first action should stand in favour of the plaintiff for 29*5*l.** This award was afterwards set aside by the Court.<sup>a</sup> Notice of trial having been given, the order in question was made by the Lord Chief Justice to allow the plaintiff to amend his particulars, by inserting some of the items which had been charged against the defendants in the second action, and which the plaintiff expected to be able to prove to have been done in the lifetime of the testator.

*E. V. Williams* shewed cause, and contended that the order in question met the justice of the case, and was no hardship on the defendants. The plaintiff only sought not to be prevented from recovering for what was done prior to the testator's death. It is said that the amendment would deprive the defendants of the benefit of the Statute of Limitations.

*Maule, J.*, referred to *Staples v. Holdsworth*.<sup>b</sup>

*E. V. Williams*.—If the plaintiff is entitled to make these charges at all against the defendants, he has commenced his action in time, and ought not to be barred by the statute; but the amendment was not applied for with any view to save the statute.

*Kelly and Powell*, in support of the rule. No reason is given for the plaintiff's delay; there is a plea of payment, and this is an action against executors. Another action, too, in this case has been brought for the same demand as that sought to be included. The plaintiff ought not to be in a better situation than if he brought a fresh action. The heir is the party really liable.

*Tindal, C. J.*.—I think this rule should be discharged. In the first place we should not, without very strong grounds, or proof of manifest mistake, set aside the order of a Judge made when all the facts were before him. Then, as to the circumstances of this particular case, it appears that the plaintiff brings his action at a time when the Statute of Limitations would not operate against him, and at a certain period he delivers his particulars. Those particulars are for work done in building the house; but he, by mistake, omits items for work which he now thinks he shall be able to prove were done in the lifetime of the testator. No difficulty is cast upon the defendants; if they are not liable, the new items will not affect them.

*Bosanquet, J.*.—I am of the same opinion. The plaintiff seeks to recover for all the work, part being done in the lifetime of the testator, and part since his death; and he, therefore, in the first instance brings two actions. It turns out, on further investigation, that a smaller portion than he at first supposed has been done since the death. With reference to the Statute of Limitations, it may be observed that the plaintiff seeks to introduce the latter portion of the work.

*Erskine, J.*.—This is no fresh cause of action. The plaintiff only seeks to recover the whole of what was done before the death of the testator. The amendment is not sought

with a view of defeating the Statute of Limitations. The heir may still be sued for that part which was for his benefit, and his ability will be a defence to all that the plaintiff does not prove to have been done before the death of the testator.

*Maule, J.*.—The plaintiff stopped the operation of the statute by suing out his writ; but his demand was limited by his particulars, which he may from time to time amend, while good grounds are shewn for amendment. It is the declaration that operates on the statute, not the particulars. I think Lord *Denman* exercised a very sound discretion in making the order for the amendment.

Rule discharged with costs.—*Jones v. Corrie and another, executors of Wilkins*, H. T. 1840. C. P.

#### ATTORNEY'S BILL.—PAYMENT INTO COURT.—ATTORNEY AND CLIENT.—AWARD

*An attorney brought an action for his costs, and a certain sum was paid into Court. The cause was referred, and it was agreed that the claim of the plaintiff should be limited to a certain day; he was found to be overpaid to that day. The Court refused to disturb the award.*

This was an action of *assumpsit* for the balance of an attorney's bill, to which there was a plea of payment of 2*l. 15*s.** into Court. The defence was, that there was no authority on the part of the defendant for the business done beyond that amount. The defendant gave evidence on the trial to shew that he revoked the authority given by him to the plaintiff, and the bill was subsequently referred for taxation. It appeared that the defendant was present at the plaintiff's office on the 23d August, and he then consented that the bill should be taxed down to that day. On the taxation, the master found that the sum paid into Court exceeded what was due to the plaintiff for business done down to that day by 2*s.* or 3*s.*, and a verdict was consequently entered for the defendant.

*Crowder* applied for a rule to amend the rule for taxation, by altering the day down to which the bill was to be taxed. The reason why that day was fixed on was, that the plaintiff could clearly prove that the authority given to the plaintiff existed down to that day. The defendant being once liable, the burden of shewing the authority to have been revoked clearly laid upon him.

*Bosanquet, J.*.—I think no rule should be granted. Though it turns out that a day was fixed which was to the disadvantage of the plaintiff, yet he was bound by his assent.

*Coltman, J.*.—This is in effect an application to set aside the verdict, because evidence is discovered which might, if presented at the trial, have led to a different result. Such an application can only be made on payment of costs, and is not grantable at all when the matter in dispute only amounts to 2*s.* or 3*s.*

*Maule, J.*, concurred.

*Briggs v. Glover*, H. T. 1840. C. P.

<sup>a</sup> See 5 B. N. C. 188; 7 Scott, 106.

<sup>b</sup> 6 D. P. C. 715.

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- Massey, Joseph, Habergham Eaves, near Burnley, Lancaster, Worsted Spinner. *Scutt & Co.*, Lincoln's Inn Fields; *Shaw & Co.*, Burnley. March 27.
- Martin, Samuel, Shoreditch, Grocer. *Abbott*, Off. Ass.; *Sandom*, Dunster Court, Mincing Lane. April 3.
- Meyer, John George, Baltic Coffee House, Threadneedle Street, London, Wool Broker. *Johnson*, Off. Ass.; *Cox & Co.*, Pancras Lane. April 7.
- Markland, William, Bolton-le-Moors, Lancaster, Ironfounder, Plumber and Shopkeeper. *Adlington & Co.*, Bedford Row; *Lever*, Bolton-le-Moors. April 7.
- Mosedale, William, Derby, Engine Manufacturer. *Smith*, Chancery Lane. April 7.
- Milner, Thomas, Stockton-upon-Tees, Durham, Draper and Shopkeeper. *Adlington & Co.*, Bedford Row; *Chew*, Manchester. April 7.
- Manley, Thomas, jun., Atherton, Lancaster, Patent Nail Manufacturer. *Smithson & Co.*, Southampton Buildings; *Thompson & Co.*, Manchester. April 7.
- Mason, Thomas, West Bromwich, Stafford, Grocer. *Taylor & Co.*, Bedford Row; *Arnold*, Uttoxeter. April 10.
- Moody, Samuel, Leeds, York, Printer. *Rubinson & Co.*, Essex Street, Strand; *Middleton*, Leeds. April 10.
- Monkhouse, William Cam, Aberystwith, Cardigan, Wine Merchant and Brewer. *Messrs. Evans*, Chepstow; *Hughes & Co.*, Aberystwith or *Poole & Co.*, Gray's Inn Square. April 14.
- Naylor, William Graham, High Street, Shadwell, Middlesex, Tea Dealer and Grocer. *Lackson*, Off. Ass.; *Simpson & Co.*, Austin Friars. April 3.
- Nuttall, William, Manchester, Grocer and Banker. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. April 10.
- Owen, William Purchase, Exeter, Wine and Spirit Merchant. *Turner*, Exeter. March 27.
- Onions, William Michael, West Bromwich, Staff-ford, Ironfounder. *Alban & Co.*, Lincoln's Inn; *Corser*, Stourbridge. April 7.
- Owen, Noah, Neath, Glamorgan, Grocer. *Lake & Co.*, Basinghall Street; *Hargreaves*, Neath. April 14.
- Palmer, Robert, and Frederick Palmer, Reading, Berks, Coal Merchants, Slate and Salt Merchants. *Blandy*, Reading; *Adlington & Co.*, Bedford Row. March 24.
- Prat, Samuel, Glastonbury, Somerset, Attorney and Money Scrivener. *Hope & Co.*, Wells; *Pulling & Co.*, Hare Court, Temple. March 24.
- Pinkerton, John, High Street, Southwark, Glass Cutter and Dealer in China and Earthenware. *Turquand*, Off. Ass.; *Williams & Co.*, Ely Place. March 31.
- Parrington, William, Leeds, York, Woollen Cloth Manufacturer. *Haslam & Co.*, Copthall Court; *Teale & Co.*, Leeds. March 31.
- Perkins, William, Saint Woolos, Monmouth, Ship Builder. *Hall*, New Boswell Court; *Prothero & Co.*, Newport. April 3.
- Payne, Thomas, Dolgelly, Merioneth, Auctioneer and Builder. *Lowe & Co.*, Southampton Buildings; *Roberts*, Carnarvon. April 10.
- Pile, Edward Oley, Newcastle-upon-Tyne, Grocer and Tobacconist. *Meggison & Co.*, King's Road, Bedford Row; *Hoyle*, Newcastle-upon-Tyne. April 14.
- Potts, James, Stoke-upon-Trent, Stafford, Grocer and Baker. *Price & Co.*, Lincoln's Inn Fields; *Bishop*, Staffordshire Potteries. April 14.
- Richards, Griffith, and Thomas Manwaring, Bridge Road, Lambeth, Surrey, Linen and Woollen Drapers and Hatters. *Clark*, Off. Ass.; *Farrar & Co.*, Godliman Street, Doctors' Commons. March 31.
- Raw, George, Saint Helen's, Lancaster, Innkeeper. *Chester*, Staple Inn; *Ansdell*, Saint Helen's. April 10.
- Ryland, John, jun., and William Chapman, Birmingham, and George Manley Smith, of Birmingham and Coventry, Mill and Press Mak-kers. *Swain & Co.*, Old Jewry; *Whalley & Co.*, Birmingham. April 17.
- Sleep, Samuel, Altarnun, Cornwall, Linen Draper. *Messrs. Little*, Devonport; *Messrs. Sole*, Al-dermanbury. March 24.
- Symes, John Baker, and Francis Blanchard, Keinton Maudefield, Somerset, Tailors, Drapers and Hatters. *Adlington & Co.*, Bedford Row; *James*, Glastonbury. March 27.
- Smith, John, Manchester, Commission Agent. *Miles & Co.*, Temple; *Slater & Co.*, Manches-ter. March 31.
- Scampton, Robert, Coventry, Grocer and Provision Dealer. *Buck*, Ironmongers' Hall, Fenchurch Street. *Troughton & Co.*, Coventry. April 3.
- Savage, Edward, Newcastle-upon-Tyne, Dealer in Marine Stores. *Meggison & Co.*, King's Road, Bedford Row; *Hoyle*, Newcastle upon-Tyne. April 3.
- Stone, William, and James Gibson, Bristol, Tai-lors. *Jackson & Co.*, New Inn, Strand; *Wil-liams & Co.*, Bristol. April 7.
- Stripling, John, Liverpool, Ship Chandler and Sail Maker. *Avison & Co.*, Liverpool. *Adlington & Co.*, Bedford Row. April 10.

- Styles, Robert Poole, Banbury, Oxford, Chemist and Druggist and Soda Water Manufacturer.** Cox & Co., Lincoln's Inn Fields; Walford & Co., Banbury. April 10.
- Seddon, Thomas, and George Seddon, Gray's Inn Road, Cabinet Makers and Upholders.** Clark, Off. Ass.; Brown & Co., Mincing Lane. April 14.
- Sydebotham, Charles, and William Sydebotham, Liverpool, Ship and Anchor Smiths and Chain Cable Manufacturers.** Taylor & Co., Bedford Row; Lowndes & Co., or Davenport & Co., Liverpool. April 14.
- Smith, Betty, Southport, Lancaster, Boarding and Lodging-house keeper.** Johnson & Co., Temple; Messrs. Wood, Manchester. April 14.
- Swift, James, Birmingham, Brass Candlestick Maker and Founder.** Newton & Co., South Square Gray's Inn; Smith, Birmingham. April 17.
- Tulloch, Donald, Duchess Street, Portland Place, and of Adelphi Wharf, Strand, Coal Merchant.** Whitmore, Off. Ass.; Loveland, Symond's Inn. March 24.
- Taylor, John, Willowholme, Carlisle, Cumberland, Miller and Corn Merchant.** Mounsey & Co., Staple Inn; Mounsey, Carlisle. March 27.
- Tyler, Henry, and William Tyler, Dudley-port, Stafford, Cement Manufacturers, and of Nuneaton, Warwick, Iron Manufacturers.** Clarke & Co., Lincoln's Inn Fields; Bennett, Wolverhampton. April 7.
- Vivian, John Robins, East Stonehouse, Devon, Dealer.** Baron, Plymouth; Poole & Co., Gray's Inn Square. March 27.
- Weston, Thomas Cotton, Wem, Salop, Coal Merchant.** Pownall & Co., Staple Inn; Walmsley, Wem. March 27.
- Waite, Samuel Farnley, Leeds, York, Cloth Manufacturer.** Wilson, Southampton Street, Bloomsbury; Fidney, Serjeant's Inn, Fleet Street; Payne & Co., Leeds; or, Barr & Co., Leeds. March 31.
- Wilson, James, Toxteth Park, Lancaster, Victualler and Excavator.** Worthington & Co., Liverpool; Taylor & Co., Bedford Row. March 31.
- Worthington, Matthew, Ulverston Lancaster, Innkeeper.** Norris & Co., Bartlett's Buildings; Pearson & Co., Ulverstone. April 3.
- Wardlaw, James, and Mary Wardlow, Bankwood Mill, Charlesworth, Glossop, Derby, Cotton Spinners.** Brackenbury, Manchester; Johnson & Co., Temple. April 3.
- Wilkinson, Charles John, Eye, Suffolk, Merchant and Miller.** Ling & Co., Bloomsbury Square; Messrs. Cobbold, Ipswich. April 7.
- Wright, William, Liverpool, Corn Merchant and Factor.** Taylor & Co., Bedford Row; Lowndes & Co., Liverpool. April 7.
- Wallbank, Charles, Birmingham, Metal Dealer.** Chaplin, Gray's Inn Square; Harrison, Birmingham. April 10.
- Wilson, Robert, Aldermanbury, London, Hosier Lackington, Off. Ass.; Goddard, King Street, Cheapside.** April 14.
- Weatherby, Edward, Newmarket, Cambridge; James Hilton Foord of Bondlondel, Carnarvon; William Legh Hilton, Holywell, Flint; Richard Addison, Preston, Lancaster and Robert Gibson, Bolton-le-Sands, Lancaster, Cotton Spinners and Bankers.** Kay & Co., Manchester. April 14.
- Wightman, Frederick Wilcockson, Bawtry, York, Woollen and Linen Draper.** Walker, Farnival's Inn; Blackburn, Leeds. April 14.
- Wilson, Samuel, and John Knight, Radford, Nottingham, Builders.** Fox & Co., Nottingham; Campbell & Co., Essex Street. April 17.
- Young, William Sawer, West Smithfield, London, Banker.** Abbott, Off. Ass.; Stevens & Co., Queen Street, Cheapside. March 24.
- Young, Robert, Scarborough, York, Silk Mercer.** Messrs. Brace, Surrey Street, Strand; Page, Scarborough. March 31.
- Young, Richard, Wandsworth, Surrey, Builder.** Whitmore, Off. Ass.; Willis, Robert Street, Chelsea. April 14.
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- ### PRICES OF STOCKS.
- 
- Tuesday, 21st April, 1840.*
- |   |   |
|---|---|
| Bank Stock, div. 7 per Cent. - - - - -              | 175½ a 5 a ½  |
| 3 per Cent. Reduced - - - - -                       | 89½ a ½   |
| 3 per Cent. Consols Annuities - - - - -             | 90½ a ½ a ½   |
| 3½ per Cent. Annuities, 1818 - - - - -              | 98½ a ½   |
| 3½ per Cent. Reduced Annuities - - - - -            | 98½ a ½ a ½ a ½   |
| New 3½ per Cent. Annuities - - - - -                | 99½ a ½ a ½ a ½   |
| Long Annuities, expire 5th Jan. 1860                | 13½ a ½ a ½   |
| Annuities for 30 years, exp. 10th Oct. 1859         | 13½ a ½   |
| Ditto ditto   | 5th Jan. 1860 13½                                       |
| India Stock, div. 10½ per Cent. - - - - -           | 250½ a 50   |
| Ditto Bonds, 3 per Cent. - - - - -                  | 4 pm.   |
| Ditto New Annuities div. 3 per Cent. - - - - -      | 88½   |
| 3 per Cent. Consols for Acct. 26th May 91 a ½ a 1   |   |
| Exchequer Bills, 1000 <i>l.</i> at 2½ <i>d.</i> - - | 21 <i>s.</i> a 23 <i>s.</i> pm.                         |
| Ditto   | 500 <i>l.</i> - - - - - 21 <i>s.</i> a 23 <i>s.</i> pm. |
| Ditto   | Small - - - - - 21 <i>s.</i> a 23 <i>s.</i> pm.         |
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- ### THE EDITOR'S LETTER BOX.
- 
- The letters on the Construction of a Will; Stamps on a Bargain and Sale for a Year; the Regulations of the Inns of Court; and the Statute of Limitations, have been received.
- 
- The present number closes the nineteenth volume of our work; and we beg to announce that after the completion of our next volume, we intend publishing a complete Index, which will render the vast body of legal information contained in the twenty volumes easily accessible.
- Several numbers of the work have been reprinted, and imperfect sets may at present be completed.
- Persons having any of the following numbers may obtain the full price for them by applying to our publisher:—Numbers 330, 331, 332, 397.

# DIGESTED INDEX

TO THE  
CASES REPORTED IN VOLUME XIX.

## ALIEN.

1. In an action of libel, the plaintiff declared, alleging the publication of a libel upon him in his character of dragoman or interpreter to the English Ambassador at Constantinople; the defendant pleaded that the plaintiff was an alien born, and was resident at Constantinople, and that he had never been naturalized or admitted a denizen in this kingdom: Held ill, on general demurrer. *Pisani v. Lawson*. Page 63

2. A devise of lands to English subjects, in trust to sell and invest the proceeds in the public funds, in trust for persons, some of whom were aliens: Held, upon a bill, to which the Attorney General was a party, that the Crown had no right, as against the aliens, over the lands, or the proceeds of the sale of them. *De Hourmelin v. Shelden* . 235

## APPEAL.

1. The statute 5 & 6 W. 4, c. 50, gives a party aggrieved by any order or conviction made, or any matter or thing done under that act, an appeal to the sessions. *F.* was upon an information by a parish surveyor, convicted by two justices of an offence against that act. A party appealing must give notice to the person by whose act he is aggrieved. *F.* appealed against the conviction. He served a proper notice of appeal on the surveyor, and addressed a notice to both the convicting justices, but served it on one only: Held, that the parties by whose act he was aggrieved, were the convicting justices, and that the notice ought therefore to have been served on them, and as they were not joint officers, it ought to have been served on each of them. *The Queen v. The Justices of Bedfordshire, in the matter of Fuster* . 75

2. The Birmingham and Gloucester Railway Act requires that recognizances shall be entered into "forthwith" after notice of appeal: Held, that the meaning of the act is, that sureties shall be given within a reasonable time, and that nine days is too long without some reason being assigned for the delay. *The Queen v. Justices of Worcestershire* . 218

3. Where there is no caveat entered against enrolling a decree, a petition of appeal presented against it, and answered by the Lord Chancellor, and set down for hearing, deposit being paid, will not stop the enrolment, unless the party enrolling it has led the appellant to believe he would not enrol it. But service of the order for hearing the appeal, stops the enrolment. *Dearman v. Wyche* . 214

## APPRENTICE.

An apprentice was injured by the act of *A.*'s servant. The master thereby not only altogether lost the services of his apprentice for a time, but the apprentice also, when able to return to work, became unfit to do the finer sorts of work in his master's business. Before the apprentice had quite recovered, the master brought his action against *A.* for the loss of the apprentice's services. Evidence was admitted to show how long the apprentice was likely to continue affected by the injury, and the judge left that as a matter for the consideration of the jury in estimating the damages: Held, that he was right in so doing. *Hodson v. Stallebrass* . Page 215

## ARBITRATION.

1. It is no ground for setting aside an award, that the arbitrator has directed the payment of a sum of money to be made on a Sunday, although it would be an answer to an application for an attachment, on the ground of the money not being paid on that day. *Hobdell v. Miller* . 286

2. Where a party delays for four years after making an award before he applies for an attachment, the delay ought to be accounted for on affidavit. *Story v. Golley* . 301

3. An arbitrator has no power to order costs to be paid as between attorney and client, and if a provision ordering such costs to be paid, is so connected with other parts of the award that it cannot be rejected as an independent provision, the award is bad. *Seckham v. Bubb* . 383

## ASSIGNMENT.

*A.* assigned to *B.* for valuable consideration, an annual sum granted to him, during pleasure of the grantors, as compensation for an office which *A.* had held, and which was abolished by act of parliament, and due notice of the assignment was given to the grantors: Held, upon motion before the hearing of the cause, that the assignment was valid in equity as between *B.* and *A.*'s general creditors. *Tunstall v. Boothby* . 380

## ATTORNEY.

1. The plaintiff's attorney cannot act as the defendant's attorney in attesting a cognovit, pursuant to 1 & 2 Vict. c. 110, s. 9, although named by the defendant for that purpose. *Mason v. Kiddle* . 335

2. Unless there is strong reason to believe that a person will not be able to come up to be examined and admitted pursuant to notices

given, the Court will not allow the effect of the notices to be extended to another term.  
*Ex parte James* . . . . . Page 29

3. An accidental omission of the notice to the Law Society of the intention to be examined, may be excused on application to the Court, where the due notices have been given at the Master's office. *Ex parte Rowland* 30

4. A declaration against an attorney to recover one half of certain costs, to which the client has become liable in consequence of the attorney's negligence, should disclose that by an agreement between the parties the claim of the client in respect of the attorney's negligence the rest of the costs is waived, otherwise a sufficient consideration will not appear.  
*Smart v. Chell* . . . . . 143

5. The affidavit for re-admission should be lodged the day before the commencement of term at latest, though under special circumstances, it may be lodged after the commencement of the term. *Ex parte Granger* . . . . . 29

6. Under special circumstances, the Court will allow an articled clerk to be examined before the expiration of his five years' service.  
*Ex parte Twynam* . . . . . 62

7. Where there are several counts in a declaration, some of them good and some bad, and a verdict is taken generally, and damages generally assessed, the Court will not permit the plaintiff by an order of the judge before whom the cause was tried, to enter the verdict for the plaintiff on the good counts, and on the others for the defendant, but will award a *venire de novo*. *Empson v. Griffin* . . . . . 190

8. *A.*, an attorney, was employed by *B.* and *C.* to prepare certain documents, to secure a loan upon an annuity; a warrant of attorney was afterwards executed by *C.* and *D.*, at which *E.*, another attorney, was employed for *C.* and *D.* It was part of the agreement that *C.* should pay all the costs of the transaction: Held, that *A.* was the attorney of *C.*, and that the latter was entitled to the delivery of a bill of costs. *Painter v. Linsell* . . . . . 216

9. An attorney brought an action for his costs, and a certain sum was paid into Court. The cause was referred, and it was agreed that the claim of the plaintiff should be limited to a certain day. He was found to be overpaid to that day. The Court refused to disturb the award. *Briggs v. Glorer* . . . . . 508

#### BAIL.

The Court has no discretion to allow bail to render their principal, where more than fourteen days have elapsed after the service of a writ upon them, although the non-render has arisen from accident. *Bird v. Atkins's bail* 127

#### BANKRUPT.

1. An act of bankruptcy was committed the 5th of March. The fiat bore date the 4th of May next following, but was not delivered out of the Bankruptcy Office until the 6th of May: Held, that the fiat was sued out within two calendar months from the act of bankruptcy.  
*Ex parte Rose* . . . . . 95

2. *A.* accepted bills for the accommodation of *B.*, which *B.* indorsed and deposited with his bankers as security for his floating balance with them. *B.* was afterwards declared bankrupt, and the bankers proved a debt under the commission, far exceeding the amount of the bills, exhibiting them in their proof as being securities then held by them, and they received a dividend of 2s. in the pound on the amount of the proof. *A.* afterwards paid them the amount of the bills: Held, (reversing an order of the Court of Review) that *A.* was entitled to receive the past dividend from the bankers, and to stand in their place in respect of all future dividends in their proof, to the extent of the amount of the bills. Should the bankers refuse to refund the past dividend to *A.*, this Court would order the assignees to pay to him that dividend to the amount of the bills out of the future dividends coming to the bankers; but *quare* whether the Court has jurisdiction to compel the bankers to refund. *Ex parte Holmes, In re Garner* . . . . . 170

3. A fraudulent sale of goods by a trader through the agency of one of his creditors, the purchasers being unaware of the fraud, does not constitute an act of bankruptcy, under 6 G. 4, c. 16, s. 3, although the proceeds of the sale were to be applied in liquidation of the creditor's debt. *Harwood v. Bartlett* . . . . . 318

#### CHARTER-PARTY.

The owners of a ship undertook by the terms of a charter-party to load at London, and proceed to Bombay with a cargo, then to load a new cargo, and to proceed with the same direct to London; and they further agreed that the charterers should have the privilege of sending the vessel on to Calcutta, upon the payment of an extra sum: Held, that the charterers were not authorized to load a cargo to be carried from Bombay to Calcutta, but only from one of those ports for London.  
*Cockburn v. Wright* . . . . . 271

#### CLERGYMAN.

1. Where an ecclesiastical person has conveyed his living to trustees, to secure the payment of a certain sum of money borrowed, and as a further security for the same, he gives an independent warrant of attorney, this latter is not void, as a contravention of the statute 13 Eliz. c. 20, s. 1. *Bendry v. Price* 200

2. In order to ascertain whether a warrant of attorney can be considered as a charging of a benefice within the 13 Eliz. c. 20, s. 1, the Court will not read affidavits to shew the intention of the parties independent of the instrument. *Bishop v. Hatch* . . . . . 238

#### CORPORATION.

1. Where an order is made by borough justices, under the 5 G. 4, c. 71, and 9 G. 4, c. 40, and an appeal is made against such order, such appeal is properly brought before the recorder of such borough sitting in the court of quarter sessions of such borough.

The 5 & 6 W. 4, c. 76, s. 105, gives the recorder all the powers of a court of quarter sessions for the county, except in the matters therein specially excepted. *The Queen v. St. Lawrence, Ludlow* . 189

The 5 Geo. 4, c. 85, only gives to the justices of boroughs already having a jail the power of contracting with the justices of the county, or of other boroughs, for the maintenance of their prisoners. The 5 & 6 W. 4, c. 76, merely puts the town council in the place of such justices, and therefore where the town council of a borough to which under the latter statute a court of quarter sessions had been granted, but which had no jail of its own, proposed to enter into such a contract, this Court granted a *certiorari* to bring up the order of the county justices, under which the contract was to be made, on the ground that the two acts, taken together, gave the justices no jurisdiction to make it. *The Queen v. The Justices of Lancashire, in the matter of the borough of Manchester* . 140

3. Before the passing of the Municipal Corporation Act, the members of a corporation authorized one of their body to defend on their behalf, several proceedings taken against them by *quo warranto*; he did so, and incurred considerable expence. The corporation then gave him a bond to secure re-payment of these expences with interest. The bond was duly executed: Held, that this constituted a lawful debt, in respect of which he might sue the new corporation, elected under the Municipal Act. *Wordsworth v. The Corporation of Dartmouth* . 333

4. The bye law of a corporation must receive a reasonable construction, although its language, taken literally, might appear inconsistent with that construction. *Poulterer's Company v. Phillips* . 430

#### COURT OF REQUEST.

1. Where from the language of a court of requests act it appears that the plaintiff is only to be deprived of his costs in the event of a verdict being found for him to an amount less than a certain limited sum, taking an amount less than that limited sum out of court does not come within the meaning of the statute. *Jackson v. Cother* . 78

2. In an affidavit produced in support of a rule for entering a suggestion on the record to deprive the plaintiff of costs, less than 40s. having been recovered, it was sworn that the defendant, from and since the commencement of the suit, had resided within the jurisdiction of the county court to which he was liable to be warned and summoned: Held, that a sufficient *prima facie* case was made out, on which to call upon the plaintiff for an answer, and, that an objection that it was not sworn that the cause of action arose within the jurisdiction of the County Court could not be maintained.

It is no answer to such an application that the plaintiff sues as executrix, since the 3 & 4 W. 4, c. 42. *Bishop v. Marsh* . 30

#### EJECTMENT.

1. In a case where a tenant in possession was bedridden, a service on the daughter, who was residing with the tenant, was held sufficient to justify the court in granting a rule *nisi* for judgment against the casual ejector. *Doe d. Frost v. Roe* . 285

2. Where a declaration in ejectment was wrongly entitled, and no date was attached to the notice of the declaration so as to allow the tenant in possession to know the real time in which he should appear, judgment will not be allowed to be signed against the casual ejector. *Doe d. Rogers v. Roe* . 285

3. In entitling an affidavit in a landlord's rule in an action of ejectment, the names of all the lessors ought to be introduced. *Doe d. Pryme v. Roe* . 383

4. In ejectment where there were seven co-tenants, five of whom only had been served, the Court refused to grant a rule *nisi* against those upon whom no service had been effected, for judgment against the casual ejector. *Doe d. Slee v. Roe* . 47

5. An action of ejectment was brought to recover possession of a piece of land, taken into a road under the provisions of an act of parliament: a motion being made for judgment against the casual ejector, service having been effected on the commissioners, in whom the road was vested, the Court refused to grant the rule. *Doe d. White v. Roe* . 48

6. It is sufficient to serve the Secretary of the East India Company in an action of ejectment. *Doe d. Coopers' Company v. Roe* 77

#### EVIDENCE.

On a question as to the genuineness of handwriting, a witness cannot be allowed to compare the document impugned with writings of the party to whom it is ascribed, and which are alleged to be authentic, unless such writings are in evidence in the cause for other purposes. *Griffith v. Ivery* . 269

#### FOREIGN JUDGMENT.

In an action upon a foreign judgment, as the Courts here are called on to enforce it, they must first be satisfied that it was not obtained by a practice which gives the defendant no opportunity of appearing before the Court which pronounced the judgment.

An Irish judgment is subject to be examined in this manner when made the subject of an action in the Courts of this country.

In an action on a foreign judgment, the defendant pleaded that he had never had notice of the original action, nor had been served with the process therein. The plaintiff replied that he had been served with process, to wit, a certain writ of summons, &c. Held, that the replication was bad. *Fergusson v. Mahon* . 172

#### FORMA PAUPERIS.

After an action has been commenced, a plaintiff cannot be admitted to sue in *forma pauperis*. *Lovewell v. Curtis* . 78

## GUARDIAN.

Whoever enters on the land of an heir, when the heir is under fourteen years of age, may be treated by the heir at his election either as guardian in socage or as a trespasser; and where the heir, becoming of full age, sues such person in ejectment the judge must, on the facts being found, direct the jury that such is the law, and cannot leave it to them to say in what character the person entering on the land of the heir did so enter. *Doe d. Cozens v. Cozens* . . . . . Page 61

## HABEAS.

The House of Commons has the power of committing for contempt for breach of its privileges. A return stating that "A. B. having been guilty of a breach of the privileges of this House," is a sufficient statement of the offence for which he is so committed.

The warrant need not set out with greater particularity the nature of the offence.

Though if the warrant stated an insufficient cause of commitment, as by alleging some frivolous contempt, this Court would enquire into it. This Court has no jurisdiction to do so where the statement is in general terms that the party has been guilty of a contempt. *Ex parte Sheriff of Middlesex, in re Stockdale v. Hansard* . . . . . 298

## HIGHWAY.

Where a rule has been obtained for imposing a fine on a parish for non-repair of a highway, the Court will enlarge it, if the state of the season is such as to render it inconvenient to proceed with the repairs of the highway. *The Queen v. Inhabitants of Walton* . . . . . 507

## INFANTS.

The Vice Chancellor, although he is not named in the Custody of Infants' Act (2 & 3 Vict. c. 54), is comprehended under the words "The Lord Chancellor of England" by virtue of the act appointing the Vice Chancellor (53 G. 3, c. 24). *Ex parte Mrs. T.* . . . . . 44, 74

## INSURANCE.

1. Directions from an assured to two persons to effect a life policy in their own name, does not authorise them to effect it in their own name and that of another, so as to charge the assured with the premium paid. *Barron v. Fitzgerald* . . . . . 366

2. A vessel was insured on a voyage from Liverpool to Sydney and back, with liberty to call and stay for the purposes of the voyage at all and every port and ports, &c. on either side of the Cape (the Mauritius being expressly mentioned), such calling and staying not to be deemed a deviation. The vessel arrived at the Mauritius in the Spring of 1834, but could get no homeward cargo. After the season was over, the master discharged the crew and laid the ship up. At the beginning of the next season he put it into sailing order, but could get no cargo, and, at the end of April 1835, sailed for Europe in ballast. The ship was lost at sea. The jury found that the discharge

of the crew was an abandonment of the voyage insured. The Court sustained the verdict, on the ground that if not in itself a deviation, the discharge of the crew was strong evidence to shew that the delay was unnecessary, and that, being so, it would amount to a deviation. *Iring v. Burnand* . . . . . Page 429

## INTERPLEADER.

In an action to recover 1834, a second claim having been set up, the defendant applied to the Court under the Interpleader Act, and an order was made for the trial of a feigned issue between the two claimants. A verdict having been found for the plaintiff in the original action, for 50/-, the learned Judge ordered each party to pay his own costs: Held, that it was a reasonable exercise of the discretion vested in him by the statute, upon an application to set aside the order, which he made. *Carr v. Edwards* . . . . . 111

## JUDGMENT AS IN CASE OF A NONSUIT.

1. Where, after issue joined, it is discovered that the defendant is in a state of great poverty, it is a sufficient excuse for not proceeding to trial, and for discharging a rule for judgment as in case of a nonsuit, if the defendant will not consent to a *stet processus*. *Lettice v. Sawyer* . . . . . 336

2. It is not a good excuse for not proceeding to trial that the client is in the country, but the attorney does not know where. *Mellan v. Jopson* . . . . . 302

3. Where a peremptory undertaking has been given to try at the first sittings in term, and which is not fulfilled, judgment as in case of a nonsuit may be obtained in the same term. *Ashton v. Johnson* . . . . . 285, 462

4. In order to excuse a default in proceeding to trial pursuant to notice, some excuse must be alleged in shewing cause against the rule for judgment as in case of a nonsuit, beyond the mere fact of being unprepared to go to trial. *Willis v. Jopkin* . . . . . 48

5. Where a plaintiff has made default in not proceeding to trial pursuant to notice, and that default is cured by the defendant obtaining the costs of the day, that does not preclude the latter from taking advantage of a subsequent default in not giving notice of trial. *Smith v. Pole* . . . . . 112

6. Where a peremptory undertaking has been given to proceed to trial at a particular sittings in a term, and the plaintiff does not give notice for those sittings, judgment absolute as in case of a nonsuit may be moved for in the same term, after those sittings have passed. *Ashton v. Johnson* . . . . . 285, 462

## LEGACY.

A testator gave the dividends of a fund to A. the widow of B., as long as she should remain single and unmarried; and in case of her assigning or anticipating the dividends, then to go over. A. had been privately married to a second husband, who was living, though she passed as the widow of her first husband, but she did not misrepresent her condition to impose on the testator, who was

attached to her, and whose misrepresentation of her condition was not alone the motive of his bounty : Held, a valid legacy. *Rishton v. Cobb* . . . . . Page 331

LIEN.

Where goods are held by a party as a lien, they are not seizable under a writ of *sc. su.*, and therefore, if seized and sold by the sheriff under such a writ, the bailee may maintain trover against him. *Legg v. Sheriff of Middlesex* . . . . . 474

MANDAMUS.

1. Where a disputed right to an office can be conveniently tried on a return to a *mandamus*, the Court will direct that writ to be issued, though an action of money had and received would lie. The fact that such an action will lie is not of itself sufficient to prevent the issuing of the writ. *The Queen v. Hopkins and the Commissioners of the Small Debt Courts at Boston* . . . . . 460

2. The steward of a manor belonging to the Crown, is, by the 10 Geo. 4, c. 50, the proper person to grant admittance to such manor, and if he refuse to grant it, this Court will issue a *mandamus* to compel him to admit. *Quære*, whether a writ of *mandamus* will lie to the steward of any other than a Crown manor to admit a person claiming a right to be tenant of such manor. *The Queen v. The Steward of the Manor of Richmond* . . . . . 25

3. An information founded on an act of parliament, must describe it as an act passed in a session holden in a particular year, and not merely in the year itself. *Ex parte Williams* . . . . . 462

MARRIED WOMAN.

1. Gifts by will in trust (after a life interest) for an unmarried woman, during her life, for her separate use, independent of any husband she may marry, and as to some of the gifts with a prohibition against anticipation, but without words of gift over or anticipation. The legatee took a vested interest in some of the gifts while she was single, and all of them took effect in possession after her marriage : Held, that the legatee's separate estate in the bequests, as well without as with the clause against anticipation, took effect on her subsequent marriage, and continued during that coverture : that she might at any time dispose of the gifts to her separate use independent of her husband, and of those with the clause against anticipation after his death only ; that while discovert her separate estate was suspended, but would again become effectual with the like restrictions on her next marriage, if not alienated during her coverture. *Sembler*, that *Newton v. Reid*, 4 Sim. 141.; *Brown v. Pocock*, 5 Sim. 663, and the *dictum* in *Massey v. Parker*, 2 Myl. & K. 174, and other cases of that class, are overruled. *Tullett v. Armstrong* . . . . . 263

2. A married woman, having property settled to her separate use, agreed to mortgage it to *A.*, to secure payment of a loan. She becomes discovert, and mortgages the property

to *B.*, to secure payment of a loan from him. *B.* had notice of *A.*'s claim : Held, that *A.* was entitled to a prior mortgage. *Stead v. Nelson* . . . . . Page 75

3. Circumstances under which it was held, upon a bill filed by a creditor to whom the wife had given a bill of exchange for a debt contracted by her, that the sum of 300*l.* a-year, still existed as separate estate under the deed, liable to payment of her debts and to the jurisdiction of this Court, from which, however, an additional 80*l.*, being alimony, was exempt. *Quære*, as to the legality of the deed. *P'andergucht v. De Blaquire* . . . . . 106

4. A testator gave his daughter, then unmarried, all his leasehold estate, and all his monies, public stocks, and all his personal estate and effects, to her separate use, free from the controul of any husband she might marry, and from his debts, and appointed her sole executrix. She proved the will and married. By articles executed on the marriage, part of the public stocks were settled in trust to her separate use : Held, by the Vice Chancellor, that the leasehold estate and other personal property given by the will, were to her separate use, and not liable in equity to be taken in execution for the husband's debts. But the Lord Chancellor suspended his judgment, and required security for the property pending the suit. *Newlands v. Holmes* . 123

5. A testator gave his daughter, then unmarried, all his leasehold houses, all his monies, public stocks, and all his personal estate whatsoever, to her separate use, free from the controul or debts of any husband she might marry, and he appointed her sole executrix of his will, which she proved, and then married ; and by the marriage settlement, part of the public stock was vested in trustees for her separate use for life, remainder to the husband : Held, upon motion before the hearing of the cause, that no part of the property bequeathed, whether leasehold or moveable, was liable to the husband's debts, and an injunction was granted till the hearing. *Newlands v. Holmes* . . . . . 364

6. *A.*, being entitled in right of his wife to real estates for her life, subject to outstanding terms, created for raising portions, &c. and having, on taking the benefit of the act for relief of insolvent debtors, assigned his estate and effects, the assignee filed a bill to be declared entitled to the rents of the estates, subject to prior incumbrances during the joint lives of *A.* and his wife : Held, by the Lord Chancellor (overruling the Vice Chancellor's decree) that the wife was entitled in equity to a provision out of the rents for her maintenance. *Sturgis v. Champneys* . . . . . 427

7. Where in an application to file the acknowledgment of a married woman, it duly appeared by the certificate that the party was of full age, but in the affidavit the same fact was stated, the deponent adding, as he verily believed, the Court refused to order the officer to file the acknowledgement, and directed the affidavit to be amended. *Re Ann Coverdale*.

## NUISANCE.

Certain individuals formed themselves into a company, and obtained an act of parliament to make a navigable canal and to receive tolls. The act did not in terms impose on them the duty of keeping the navigation clear from obstruction: But held, that by common law that duty was imposed on them, and that in a case where damage had arisen from an obstruction which had not been removed after reasonable notice, and to provide against the dangers of which, by placing lights &c., reasonable care had not been used, the proprietors were responsible in damages to the party injured, and that he might recover if he set forth in his declaration such a state of facts as would raise in law this implied duty and liability. *Barnaby v. The Lancaster Canal Company* Page 126

## OUTLAWRY.

A plaintiff brought an action while he was an outlaw; he recovered damages in the action. A motion was made, and a rule granted to stay the levy of the damages on the ground of the outlawry. The outlawry was afterwards shewn to have been set aside before the trial. The rule was discharged, but without costs. *Somers, M.P. v. Holt* . . . . . 412

## PARENT AND CHILD.

In order to maintain an action for seduction, it must appear that the daughter was in the actual service of the father at the time the alleged cause of action arose. *Blamire v. Haley* . . . . . 415

## PARLIAMENTARY PRIVILEGE.

The Court will not stay the execution of a writ of inquiry by the sheriff on the ground that it is suggested that the sheriff may incur the consequences of a breach of privilege of the House of Commons. *Stockdale v. Hansard* . . . . . 62

## PLEADING (COMMON LAW).

1. To a count for use and occupation, the defendant pleaded specially an eviction during the quarter for which the rent was sought to be recovered: Held bad, as amounting to non assumpsit. *Prentice v. Elliott* . . . . . 170

2. A count in a declaration alleged that the plaintiff had placed certain paper in the hands of the defendant for the purpose of printing a certain work for the plaintiff, but that the defendant wrongfully pawned the paper: Held, that the count was properly framed in case. *Smith v. White* . . . . . 463

3. Where, in an action on the case for deceit the plaintiff alleged in his declaration that the defendant was partner in a firm with two others, and that he made certain false representations with a view to procure goods to be advanced to the firm on credit, and the defendant pleaded that the representations were not in writing within 9 Geo. 4, c. 14, s. 6: Held, that the plea was a good answer to the action, and that the terms of that section must be taken to apply to the defendant's partners,

as "other persons," within the meaning of the legislature. *Quære*, whether such an action can be maintained. *Deveux v. Steinkiller* 202

4. Debt will lie by the payee of a promissory note against the maker, and by the drawer of a bill of exchange against the acceptor, without the words "value received" being contained in the instrument. *Hatch v. Trayes, Watson v. Keightley* . . . . . Page 317

## POOR LAWS.

1. The Poor Law Commissioners have no authority to issue to an incorporated union formed under Gilbert's act, an order, parts of which impose new duties on one of the officers of the union, and thus occasion a necessity for a new salary to be granted to him; and such order, being bad as to part, and being an entire order, is bad as to the whole, and must be quashed. *The Queen v. The Poor Law Commissioners, in the matter of the Allstonefield Incorporation* 365

2. A building erected under a local act of parliament was vested in the county justices, who held sessions and transacted the county business there. Some of the rooms were fitted up as bed rooms. A certain quantity of plate was bought by the county, and kept in this building for the use of the Judges at the assizes. Some of the Justices subscribed for a quantity of wine, which was kept in the cellars of the building, and was used by the justices when attending at sessions. A person was always resident in the building, and took care of the wine and the plate: Held, that these circumstances did not constitute such an occupation by the county justices as to make the whole body liable to be rated to the relief of the poor. *The Queen v. The Justices of Worcestershire* . . . . . 218, 237

3. Circumstances under which certain proprietors of a navigation were held liable to be rated to the relief of the poor. *Bruce and the Bath River Company v. The Churchwardens of Hanham Mills* . . . . . 50

## PRACTICE (EQUITY).

1. This Court, after making a decree for an account in a suit pending here, will exercise its jurisdiction to restrain plaintiffs from bringing actions against the defendants for the same matter in Scotland. But if some of the defendants and their property be within the foreign jurisdiction, and the plaintiffs' object by the actions there be to fix that property with a lien to answer the result of the accounts in the suit here, this Court will, on special application, grant leave to proceed with the actions, so far as to get the security of the property according to the practice of the foreign court. *Wedderburn v. Wedderburn* . . . . . 471

2. The delivery of exceptions to a bill for impertinence, will not save a defendant from contempt for want of answer, unless an order to refer them be obtained before the time for answering expires. An attachment issued for want of answer after the time for answering has expired is regular, although exceptions to the bill for impertinence were deli-

vered the same day the attachment issued.  
*Petty v. Lonsdale* . . . . . Page 283

3 Upon an issue directed by decree of the Court, and the plaintiff therein not going to trial, the Court will not on a single default, order a verdict to be taken *pro confesso* against him, but will make an order that unless he go to trial next assizes, a verdict *pro confesso* shall be taken against him. *Casborne v. Barsham* 199

4. It is irregular to allow a demurrer in part, and disallow it in part.

It is too late to appeal from an order to amend, after the amendments have been made and submitted to by the applicants demurring to the amended bill, without having applied to the Court. *Wellesley v. Wellesley* 186

#### PRACTICE (COMMON LAW).

1. Where a judge's order for taxing costs is made a rule of Court, execution may be issued on it at once, without application to the Court. *Wallis v. Sheffield* . . . . . 64

2. It is regular to arrest a defendant on a writ of *ca. sa.* more than a year after it has been issued, if that writ has been issued within a year after the judgment. *Simpson v. Heath* 191

3. It is no objection to an application for security for costs on the ground of a plaintiff being abroad, that the defendant has obtained time to plead on the usual terms. It is an objection to such an application that the plaintiff is resident in this country at the time of the application being made, although he is usually resident abroad. *Dowling v. Harman*. 240

4. Judgment having passed for the plaintiff on a demurrer to one plea, and the cause being taken down for trial upon another plea, when a juror was withdrawn by consent, the Court refused to give the plaintiff the costs of his demurrer. *Burdon v. Flower* . . . . . 239

5. When an order for time to join in demurrer has been obtained, it ought to be served within a reasonable time after making it, or the opposite party may sign judgment. *Kenney v. Hutchinson* . . . . . 415

6. A judge at chambers has no power, without the consent of the parties, to stay proceedings on payment of debt and costs. *Reynolds v. Sherwood* . . . . . 301

7. A rule to compute cannot be successfully opposed, by shewing that the judgment is irregular; but a separate application must first be made to set aside the judgment, for which application time will be given, at the time of showing cause against the rule to compute. *Keily v. Villebois* . . . . . 78

8. A similiter by the party whose pleading it is, requires to be dated. The objection to a want of a date, is not waived by not opposing a judge's order for a writ of trial on that ground. *Middleton v. Hughes* . . . . . 302

9. In enlarged rules, nothing but an inevitable accident can excuse not filing affidavits a week before term. *Wright v. Lewis* . . . . . 383

10. A judge has no power without consent to order a defendant to allow the plaintiff to enter and inspect the work done by the latter

on the premises of the former, for the purposes of an action then pending between the parties. *Turquand v. Strand Union* Page 319

11. A summons to amend a declaration by a plaintiff, operates as a stay of proceedings for one day, though not followed up by a second summons, and notice is given by the plaintiff after the return of the summons that he will not proceed with the amendment. *Hodgson v. Cayley* . . . . . 234

12. Where it becomes necessary for the purposes of justice to consider the fraction of a day, the Court will do so; and, therefore where a defendant died between eleven and twelve o'clock, and a writ of *sc. fa.* was sued out before one and two o'clock on the same day against the defendant's goods, it was held to be irregular. *Clinch v. Smith* . . . . . 334

13. It is ground of setting aside a demurrer, that the words "in the year of our Lord" are omitted in its title. *Holland v. Thealdi*.

334

14. Where the affidavit is regular, with respect to attempts to serve a writ of summons, to which an appearance has not been entered by the defendant in due time, and a search for an appearance has been made on Saturday, a rule for a *distringas* may be obtained on the Monday following. *Spence v. Barker* . 238

15. The Court will not entertain a rule to dismiss a summons, which is pending at chambers. *Abbott v. Hopper* . . . . . 110

16. Semble, that imparlances in proceedings by *sci. fa.* are abolished since the passing of the Uniformity of Process Act. *Doe d. Phillips v. Roe* . . . . . 47

17. The indorsement on the copy of a writ of summons, directing the defendant to pay the amount of the debt and costs "to the plaintiff or his attorney;" the Court refused to set aside the copy of the writ, and held that the indorsement might be amended. *Anon.* . . . . . 48

18. A rule being moved for, and the Court taking time to consider, the rule being granted may be dated after the day on which it was applied for. *Egan v. Rowley* . . . . . 77

19. Where a rule *nisi* to compute has been obtained, the defendant having gone abroad, it should be made a part of the rule that service at his ordinary place of abode, and by sticking up a copy of the rule in the master's office shall be deemed good service. *Neilson v. Slee* . . . . . 78

20. Where the Chancellor of a county palatine directs his mandate to the Sheriff, the latter may return it either to the Chancellor or the Court out of which the writ issues, and, therefore, although he has returned it to the Chancellor after being ruled to return it to the original Court or the Chancellor, he is not liable to an attachment. *The Queen v. Sheriff of Lancaster* . . . . . 173

21. Where two actions were brought against executors, the former against them as executors, and the latter in their own right, the plaintiff was allowed to amend his particulars in the former by adding items sought to be recovered in the latter. *Jones v. Corrie* . 508

## PRINCIPAL AND AGENT.

Where *A.* has for some time been acting as the general agent of *B.* and in *B.*'s business, and has been in the habit of making contracts on his behalf, but *B.*, after some disputes between them, sends him express orders not to buy or sell on *B.*'s account beyond a certain limit, if such restriction is not known to the trade at large, it will not affect the rights of a third person with whom *A.* afterwards makes a contract exceeding the limits assigned him. In such a case, evidence of a particular custom in the trade is not admissible to defeat the general rule of law as to the liability of the principal for the acts of his agent. *Trueman and another v. Loader* . . . . . Page 472

## PROHIBITION.

This Court will not presume that the Ecclesiastical Court will come to a wrong conclusion on a matter over which it has jurisdiction. Though therefore a declaration in prohibition shewed that the Ecclesiastical Court had not in the first instance admitted a plea in a suit for the enforcement of a church-rate that such rate was retrospective, to be a conclusive answer to the suit, but had directed further proceedings, this Court on demurrer to the declaration gave judgment for the defendant. *Griffin v. Ellis and another* . . . . . 413

## PROSECUTION.

The fact that a man was bound in recognizances to appear and prosecute *A.*, is in itself no answer to an action afterwards brought by *A.* for an alleged malicious prosecution, if the original charge was in fact made without reasonable and probable cause. A Judge is not in such a case bound to leave it to the jury to say whether the bill of indictment was preferred from a malicious motive or from a fear of forfeiting the recognizances. *Dubois v. Keats* . . . . . 284

## QUO WARRANTO.

The charter of the borough of Maldon granted the right to the freedom of that borough to different classes of persons, and among other things, declared that every daughter of an admitted freeman should have a right to nominate and appoint her husband a freeman, and further, that if any daughter of an admitted freeman died "leaving her husband and child or children or any of them behind her," he and they should be respectively entitled to the freedom of the borough in the same way as if her husband had been admitted during her life. *A.*, a stranger married the daughter of a freeman. She died before her husband was admitted a freeman; he married again, and had a son by his second marriage: Held, that this son was entitled to the freedom by birth. *The Queen v. J. Bunting, the younger* . . . . . 45

## RAILWAY ACT.

Circumstances under which the Court refused to allow the defendant to traverse the

fact of due notice of the calls having been given: Held also, that a plea that the calls were made for other purposes than those mentioned in the act, could not be pleaded, and that the proper place to agitate such a question was at a general meeting of the subscribers to the company: Held also, that a plea that the calls were made to pay the expense of deviations from the prescribed line of railway could not be pleaded; and the Court refused to allow a plea, denying the existence of 36,000 shares in the company. *Brighton Railway v. Wilson, Same v. Fairclough* . . . . . 173

## RECEIVER.

This Court may appoint a receiver to get in a testator's estate in aid of an administrator of the Ecclesiastical Court *pendente lite*, but such receiver is not to go upon the property of the testator claimed by one of the parties under an assignment independently of the will, nor will the Court restrain such party from receiving the rents of the property comprised in the assignment. *Jones v. Godrich*, Page 296

## REGISTRATION.

The 6 & 7 W. 4, c. 86 (the Birth, Marriage, and Death Registration Act), is compulsory in its provisions, and if the information required by that statute is withheld, the party withholding it is liable to an indictment. A public act which does require certain things to be done, but does not attach any specific penalty to the not doing of them, may be enforced by indictment. *The Queen v. Price* . . . . . 381

## SCIRE FACIAS.

Though the entry of a suggestion on the roll may be sufficient to charge a person already a party to the record with a liability to costs, greater than he would be subject to in ordinary cases, yet where the object is to enforce a judgment against a person not already by name a party to the record a scire facias must be issued. *Bosanquet v. Ransford* . . . . . 461

## SEQUESTRATION.

The Court will allow a writ of *levari facias*, improperly returned by the bishop, to be taken off the file and re-issued to that officer. *Allderton v. St. Aubyn* . . . . . 320

## SLANDER.

The defendant in an action of slander has a right to have the question of *bona fides* left to the jury. *Podmore v. Lawrence* . . . . . 269

## SPECIFIC PERFORMANCE.

1. By articles of agreement *A.* covenanted with *B.* his wife, and *C.* her trustee, (who thereby agreed to covenant to indemnify *A.* against his wife's debts), to pay 1,000*l.* to *D.*, for the wife's use, and also to secure to *B.* and his executors an annuity, during the wife's life for her use, by a charge on *A.*'s real estates or an investment in the funds, or by other means. On a bill filed by *B.*, *C.*, and *D.*

against *A.* and trustees of his real estates, alleging that he refused to perform his covenant although he had sufficient means to satisfy it, and charging that he and his trustees were disposing of his real estates in fraud of the covenant, and praying specific performance: the *Lord Chancellor* overruled a demurrer by the trustees, holding that at the hearing of the cause, on the facts alleged in the bill, the Court would give effect to the covenant on the real estates. *Wellesley v. Wellesley* Page 186

2. Circumstances under which it was held upon demurrs to a bill for want of equity and want of parties, that the plaintiff had a clear equity for specific performance, not only against the parties to the contract, but also against the whole company; that it was not necessary to make all the shareholders defendants, but that the directors and representatives of the company at the time of filing the bill should all be made parties. The demurrer for want of equity therefore, was overruled, but that for want of parties was allowed with leave to amend the bill, and without costs.

*Attwood v. Small* . . . . . 409

#### SOLICITORS.

1. A bill filed for rectifying a deed, charged solicitors with fraud in preparing it, and prayed costs against them: Held, that they were properly made parties, although they had no interest in the subject, and might be witnesses for other defendants. A prerogative probate or administration is not necessary to enable a person to sue in equity, as the representative of a testator or intestate, if he has the proper diocesan probate or administration. *Beades v. Burch* . . . . . 316

2. A solicitor having obtained an order for taxation of costs against his client, served the latter personally with the master's certificate, and afterwards obtained, after notice, an order on the client to pay the costs within three weeks, or be committed. This order was not served on the client until after the three weeks expired: Held, that this order being abandoned and spent, all the subsequent orders founded on it for enforcing the payment of the costs were irregular. *Ex parte Wilton* . . . . . 486

#### STATUTE OF FRAUDS.

Shares in a banking company are not "goods, wares, and merchandize" within the meaning of the statute of frauds, and may therefore be the subject of a parol contract. *Humble v. Mitchell*, . . . . . 109

#### TAXATION.

Taxation of costs may take place at Westminster, as well as at the Master's offices, according to the Master's discretion, and a notice to tax there is consequently good. *Blake v. Warren* . . . . . 286

#### TRIAL.

1. Where counsel have been employed at the trial of an issue before the sheriff, on a writ of trial, the Court will receive from them a statement of what took place at the trial, without a verified copy of the sheriff's

notes, when a motion is made for a new trial. *Flover v. Adams* . . . . . Page 238

2. A cause was tried as an undefended cause, no notice of the plaintiff's intention to do so having been given to the defendant, but the cause being in the written list of the day, the Court allowed this cause to be placed at the head of the list at the next sittings, the costs of the day to abide the event. *Dorrien v. Howell* . . . . . 463

#### USURY.

*A.* advanced to *B.* 1600*l.*, minus the interest thereof, at the rate of 10*l.* per cent per annum, on his promissory note payable in three months after date. The note was renewed four times within eighteen months, and the same rate of interest was charged on each renewal: Held, by the Lord Chancellor, reversing the decision of the Court of Review, that the transaction was protected by the 7th section of the act 3 & 4 W. 4, c. 98, which allowed any interest to be taken on bills or notes not having more than three months to run. *Re Poynton, ex parte Terrewest* . . . . . 26

#### VENUE.

1. The Court will not change the venue in an action for penalties for election bribery, on the ground that the election took place in a borough, and that the brother of the successful candidate is lord lieutenant of the county, and the undersheriff the agent of the brother. *Hall v. Coleman* . . . . . 318

2. A party's wife is not a proper person to make an affidavit to change the venue, unless it appears that she has the management of the matter, although her husband is sworn to be ill. *Williams v. Higges* . . . . . 302

3. In an indictment for bribery, where it appears that the conduct and character of the defendant have been made the subject of frequent severe comment in newspapers generally circulating in the county wherein the trial is to take place, the Court will change the venue. *Reg. v. Long* . . . . . 461

#### VENDOR AND PURCHASER.

An incumbrancer on an estate sold under a decree, purchased it with leave of the Court, but not being able to complete his purchase, an order was made discharging him therefrom, and ordering the estate to be resold, and the deficiency of price to be made good by him: Held, that so much of the order as discharged the purchaser was bad, and that the rule should be for the future to order purchasers to complete their contracts, or that the estates be resold, and the purchasers make up the deficiency. *Harding v. Harding* . . . . . 138

#### WARRANT OF ATTORNEY.

The Court will allow judgment to be entered up generally on an old warrant of attorney, without mentioning the amount of the debt, where, from peculiar circumstances, the amount cannot be stated. *Pickering v. Carnell* . . . . . 218

2. An attorney cannot act for both plaintiff

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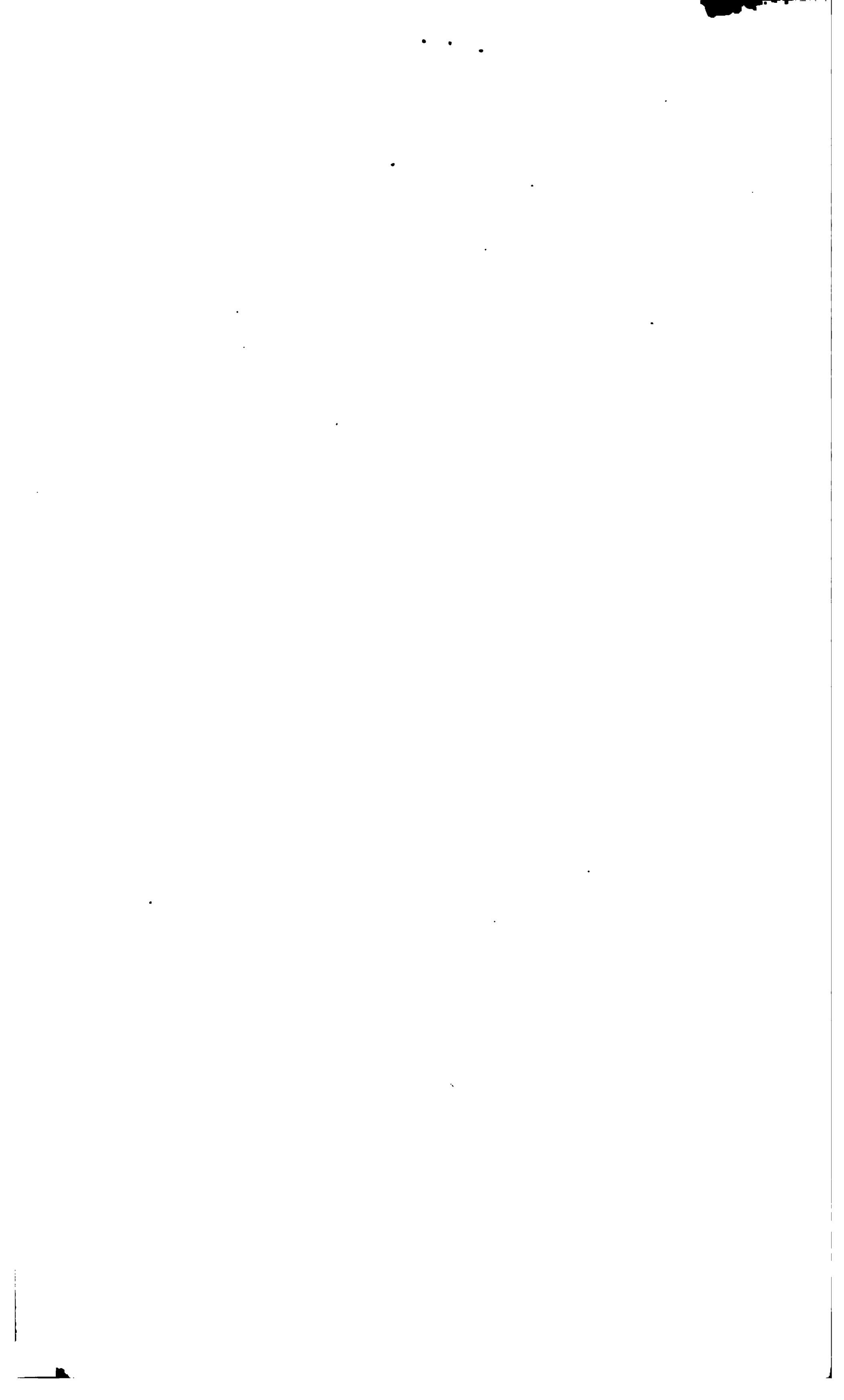
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